

**SECOND DAY - JANUARY 10, 2019**  
**LEGISLATIVE JOURNAL**  
**ONE HUNDRED SIXTH LEGISLATURE**  
**FIRST SESSION**

**SECOND DAY**

Legislative Chamber, Lincoln, Nebraska  
Thursday, January 10, 2019

**PRAYER**

The prayer was offered by Dr. Jane Florence, Saint Paul United Methodist Church, Lincoln.

**ROLL CALL**

Pursuant to adjournment, the Legislature met at 10:00 a.m., President Foley presiding.

The roll was called and all members were present except Senator McCollister who was excused until he arrives.

**CORRECTIONS FOR THE JOURNAL**

The Journal for the first day was approved.

**MOTION - Adopt Temporary Rules**

Senator Crawford moved that the rules, as now in our possession, be adopted until such time as the permanent rules are adopted pursuant to Rule 2, Section 1; provided that the temporary rules shall not continue after the twelfth legislative day, January 25, 2019.

The motion prevailed.

**COMMITTEE ON COMMITTEES PRELIMINARY REPORT**

Senator Hilkemann offered the following Committee on Committees report:

Agriculture (8)

Rm. 1524 - Tuesday

Halloran (C), Albrecht, Blood, Chambers, Hansen, B., Lathrop, Moser, Slama

Appropriations (9)

Rm. 1003 - Monday, Tuesday, Wednesday, Thursday, & Friday

Stinner (C), Bolz, Clements, Dorn, Erdman, Hilkemann, McDonnell, Vargas, Wishart

Banking, Commerce and Insurance (8)

Rm. 1507 - Monday &amp; Tuesday

Williams (C), Gragert, Howard, Kolterman, La Grone, Lindstrom, McCollister, Quick

Business and Labor (7)

Rm. 1524 - Monday

Hansen, M. (C), Chambers, Crawford, Halloran, Hansen, B., Lathrop, Slama

Education (8)

Rm. 1525 - Monday &amp; Tuesday

Groene (C), Brewer, Kolowski, Linehan, Morfeld, Murman, Pansing Brooks, Walz

General Affairs (8)

Rm. 1510 - Monday

Briese (C), Albrecht, Arch, Blood, Hunt, Lowe, Moser, Wayne

Government, Military and Veterans Affairs (8)

Rm. 1507 - Wednesday, Thursday, &amp; Friday

Brewer (C), Blood, Gragert, Hansen, M., Hilgers, Hunt, Kolowski, Lowe

Health and Human Services (7)

Rm. 1510 - Wednesday, Thursday, &amp; Friday

Howard (C), Arch, Cavanaugh, Hansen, B., Murman, Walz, Williams

Judiciary (8)

Warner Chamber - Wednesday, Thursday, &amp; Friday

Lathrop (C), Brandt, Chambers, DeBoer, Morfeld, Pansing Brooks, Slama, Wayne

Natural Resources (8)

Rm. 1525 - Wednesday, Thursday, &amp; Friday

Hughes (C), Albrecht, Bostelman, Geist, Halloran, La Grone, Moser, Quick

Nebraska Retirement Systems (6)

Rm. 1525 - At call of Chair

Kolterman (C), Bolz, Groene, Kolowski, Lindstrom, Stinner

Revenue (8)

Rm. 1524 - Wednesday, Thursday, &amp; Friday

Linehan (C), Briese, Crawford, Friesen, Groene, Kolterman, Lindstrom, McCollister

Transportation and Telecommunications (8)

Warner Chamber - Monday &amp; Tuesday

Friesen (C), Bostelman, Brandt, Cavanaugh, DeBoer, Geist, Hilgers, Hughes

Urban Affairs (7)

Rm. 1510 - Tuesday

Wayne (C), Arch, Briese, Crawford, Hansen, M., Hunt, Lowe

Committee on Committees (13)

Hilkemann (C)

District 1:	District 2:	District 3:
Bostelman	Howard	Erdman
Hilgers	Lathrop	Friesen
Pansing Brooks	Lindstrom	Groene
Morfeld	Vargas	Murman

Enrollment and Review (1)

Slama (C)

Reference (9)

Hilgers (C), Vargas (VC), Bolz, Chambers, Hughes, Kolterman, Lowe, McCollister, Scheer, Stinner (nonvoting ex officio)

Rules (6)

Crawford (C), Erdman, Howard, Hansen, M., Lathrop, Scheer (ex officio)

Executive Board of the Legislative Council (9)

Hilgers (C), Vargas (VC), Bolz, Chambers, Hughes, Kolterman, Lowe, McCollister, Scheer, Stinner (nonvoting ex officio)

**ANNOUNCEMENT(S)**

The Committee on Committees elected Senator Morfeld as Vice Chairperson.

**MESSAGE(S) FROM THE GOVERNOR**

April 19, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individuals are being appointed to the Technical Advisory Committee for Statewide Assessment:

Jeffrey Nellhaus, 4017 48th Street, Washington, DC 20016  
Robert Henson, 4330 Aldemy Circle, High Point, NC 27265

Also, contingent upon your approval, the following individual is being

reappointed to the Technical Advisory Committee for Statewide Assessment:

Linda Poole, 5054 South 171 Avenue, Omaha, NE 68135

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

April 19, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Niobrara Council:

Mary L. Mercure, 208 E. 6th Street, Valentine, NE 69201

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

April 19, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individuals are being reappointed to the Board of Emergency Medical Services:

Carl Rennerfeldt, 601 North 24th Street, Blair, NE 68008  
Randy Boldt, 1804 South 190th Street, Omaha, NE 68130  
Dr. John Bonta, 6000 South 98th Street, Lincoln, NE 68526  
Karen Bowlin, 400 Road West 30, Ogallala, NE 69153  
Ann Fiala, 132 North Walnut Street, Ainsworth, NE 69210  
Michael Miller, EdD, RN, NRP, 18427 Cinnamon Street, Omaha NE 68135

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

April 19, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Rural Health Advisory Commission:

Cherlyn Hunt, 431 East Calkins Avenue, Elm Creek, NE 68836

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

April 19, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed

to the Nebraska Arts Council:

Joyce Hasselbalch, 3520 S. 76 Street, Lincoln, NE 68506

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

April 19, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Crime Victim's Reparation Committee:

Shawn Eatherton, 3207 Avenue K, Kearney, NE 68847

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

May 31, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individuals are being appointed to the Nebraska Commission on Problem Gambling:

Todd Zohner, 82998 562 Avenue, Stanton, NE 68779

Jeffrey Bomberger, 8631 Lavender Circle, Lincoln, NE 68505

Contingent upon your approval, the following individual is being reappointed to the Nebraska Commission on Problem Gambling:

Paul Leckband, 1606 Skyline Drive, Norfolk, NE 68701

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

June 7, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individuals are being reappointed to the Nebraska Natural Resources Commission:

Donald P. Batie, 43590 Road 761, Lexington, NE 68850  
Mark Czuplewski, 2747 Lakewood Drive, Grand Island, NE 68801  
Don Kraus, 2019 Spalding Drive, Holdrege, NE 68949  
Lindsey Smith, 941 North 10th Avenue, Broken Bow, NE 68822  
Walter Dennis Strauch, 50189 Hilyard Drive, Mitchell, NE 69357  
Loren Taylor, 1119 South 3rd Avenue, Broken Bow, NE 68822

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

July 27, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol

Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individuals are being reappointed to the Crime Victim's Reparation Committee:

Michelle Schindler, 4630 Sugar Creek Court, Lincoln, NE 68516  
Thomas Parker, 2695 Ponder Place, Gering, NE 69341

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

July 27, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Nebraska Natural Resources Commission:

John Heaston, 6742 Crooked Creek Drive, Lincoln, NE 68516

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

July 27, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509



Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being reappointed to the Nebraska Ethanol Board:

Bradley B. Bird, 12018 County Road P30, Blair, NE 68008

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

July 27, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Public Employees Retirement Board:

Allen Simpson, 2401 Ryons Street, Lincoln, NE 68502

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

July 27, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed

to the Climate Assessment Response Committee:

Bryan Tuma, Nebraska Emergency Management Agency, 2433 NW 24th Street, Lincoln, NE 68524

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

September 21, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being reappointed to the Nebraska Ethanol Board:

Michael S. Thede, 327 R Road, Palmer, NE 68864

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

September 26, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed as the Nebraska State Fire Marshal – Nebraska State Fire Marshal's Office:

Christopher Cantrell, 5415 W. Chancery Road, Lincoln, NE 68521

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

September 26, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being reappointed to the Nebraska Investment Council:

Gail Werner-Robertson, 1215 North 136th Street, Omaha, NE 68154

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

November 21, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Nebraska State Electrical Board:

Mike Hunsberger, 44175 Drive 796, Broken Bow, NE 68822

Also, contingent upon your approval, the following individual is being

reappointed to the Nebraska State Electrical Board:

George Morrissey, PE, LEED, AP, ATD, 3333 North 140th Street, Omaha,  
NE 68164

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

November 21, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Niobrara Council:

Lana S. Arrowsmith, 305 Backendorf, Bassett, NE 68714

Also, contingent upon your approval, the following individuals are being reappointed to the Niobrara Council:

Jason D. Appelt, 43043 Gobblers Roost Road, Ainsworth, NE 69210  
Bradley A. Arrowsmith, 89067 Doc Middleton Drive, Bassett, NE 68714  
Dallas D. Dodson, 89542 State Highway 97, Valentine, NE 69201  
Dustin Hoefs, 90870 396th Avenue, Valentine, NE 69201  
Mary L. Mercure, 208 East 6th Street, Valentine, NE 69201  
Richard S. Mercure, 510 North Haley Street, Valentine, NE 69201

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

November 21, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individuals are being appointed to the Nebraska Arts Council:

Walter Seiler, 1208 Laramie Avenue, Alliance, NE 69301  
Amy Haddad, 9605 Oak Circle, Omaha, NE 68124  
Sarah Peetz, 940 Piedmont Road, Lincoln, NE 68510

Also, contingent upon your approval, the following individual is being reappointed to the Nebraska Arts Council:

Joyce Hasselbalch, 3520 South 76th Street, Lincoln, NE 68506

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

November 21, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Rural Health Advisory Commission:

Lynette Kramer, M.D., 2612 Hillview Drive, Albion, NE 68620

Also, contingent upon your approval, the following individuals are being reappointed to the Rural Health Advisory Commission:

Kyle Klammer, M.D., 707 Lemay Drive, Bellevue, NE 68005  
Cherlyn Hunt, 431 East Calkins Avenue, Elm Creek, NE 68836

Laeth Nasir, MBBS (M.D.), 1865 South 110 Street, Omaha, NE 68144  
Michael Allen Sitorius, M.D., 8115 Jackson Street, Omaha, NE 68114  
Rebecca A. Schroeder, Ph.D., 212 W. 9 Street, Curtis, NE 69025  
Roger D. Wells, PA-C, 1518 Jay Street, St. Paul, NE 68873

The aforementioned appointees are respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

November 26, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed to the Nebraska Board of Parole:

Robert W. Twiss, 433 Sherwood Drive, Gretna, NE 68028

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

December 27, 2018

Mr. President, Speaker Scheer  
and Members of the Legislature  
State Capitol  
Lincoln, NE 68509

Dear Mr. President, Speaker Scheer and Members of the Legislature:

Contingent upon your approval, the following individual is being appointed as the Director of the Nebraska Department of Administrative Services:

Jason Jackson, 3640 Potomac, Lincoln, NE 68516

The aforementioned appointee is respectfully submitted for your consideration. Copies of the certificate and background information are included for your review.

Sincerely,  
(Signed) Pete Ricketts  
Governor

Enclosures

**COMMUNICATION(S)**

August 6, 2018

Mr. Patrick O'Donnell  
Clerk of the Legislature  
Room 2018  
State Capitol  
P.O. Box 94604  
Lincoln, NE 68509

Mr. O'Donnell:

This letter is to inform you that as of May 17, 2018, I was elected to be the Chairman of the Chief Standing Bear National Statuary Hall Selection Committee (LB807). This Committee was formed from the passage of LB807 during the 2018 Legislative Session.

If you need any other information, please feel free to contact me or my staff. Thank you.

Sincerely,  
(Signed) Senator Tom Brewer  
Nebraska Legislature  
District 43

TB/jc

**COMMUNICATION(S)**

Received a copy of Senate Concurrent Resolution No. 40 from the state of Missouri relating to an application to Congress for the calling of an Article V convention of states to propose an amendment to the United States Constitution regarding term limits for members of Congress.

**REPORTS**

Agency reports electronically filed with the Legislature can be found on the Nebraska Legislature's website at:  
<http://www.nebraskalegislature.gov/agencies/view.php>

**ATTORNEY GENERAL'S OPINIONS**Opinion 18-004

**SUBJECT:** Constitutionality of Refundable Income Tax Credits  
in Proposed Constitutional Amendment.

**REQUESTED BY:** Senator Steve Erdman  
Nebraska Legislature

**WRITTEN BY:** Douglas J. Peterson, Attorney General  
L. Jay Bartel, Assistant Attorney General

**INTRODUCTION**

You have requested our opinion concerning the constitutionality of a legislative resolution proposing to amend the Nebraska Constitution by adding a new section providing a refundable Nebraska income tax credit in the amount of thirty-five percent of property taxes paid by the taxpayer during the taxable year. The credit would be available for taxable years beginning on or after January 1, 2021. You ask us to address two questions regarding the constitutionality of the proposed constitutional amendment: (1) Does the proposal violate the dormant Commerce Clause?; and (2) Does the proposal discriminate against non-resident Nebraska property taxpayers?

**ANALYSIS****A. Commerce Clause.**

Recently, we addressed whether legislation proposing an income tax credit based on a percentage of property taxes paid during the taxable year violated the Commerce Clause. Op. Att'y Gen. No. 18-001 (March 21, 2018). We summarized the Commerce Clause principles relevant to analyzing the constitutionality of such legislation as follows:

The Commerce Clause authorizes Congress to "regulate Commerce. . . among the several States." U.S. Const. art. I, § 8, cl. 3. "Though phrased as a grant of regulatory power to Congress, the Clause has long been understood to have a 'negative' aspect that denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles in commerce." *Oregon Waste Systems, Inc. v. Dep't of Environmental Quality*, 511 U.S. 93, 98 (1994) [*Oregon Waste Systems*"]. This "negative command, known as the dormant Commerce



Clause, prohibit[s] certain state taxation even when Congress has failed to legislate on the subject." *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 513 U.S. 175, 179 (1995). Under the four-part test adopted by the Court to govern the validity of state taxes under the Commerce Clause, a tax will be sustained against Commerce Clause challenge "when the tax is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

"[T]he first step in analyzing any law subject to judicial scrutiny under the negative Commerce Clause is to determine whether it 'regulates evenhandedly with only "incidental" effects on interstate commerce, or discriminates against interstate commerce.'" *Oregon Waste Systems*, 511 U.S. at 99 (quoting *Hughes v. Oklahoma*, 441 U.S. 322, 336 (1979)). "[D]iscrimination' simply means differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Oregon Waste Systems*, 511 U.S. at 99. "[A] state tax that favors in-state business over out-of-state business for no other reason than the location of the business is prohibited by the Commerce Clause." *American Trucking Ass'ns, Inc. v. Scheiner*, 483 U.S. 266, 286 (1987). "[T]he degree of a differential burden or charge on interstate commerce 'measures only the extent of the discrimination' and 'is of no relevance to the determination whether a State has discriminated against interstate commerce.'" *Oregon Waste Systems*, 511 U.S. at 100 n.4 (quoting *Wyoming v. Oklahoma*, 502 U.S. 437, 455 (1992) (emphasis in original)).

In assessing if a state tax impermissibly discriminates against interstate commerce, a court must consider not only the tax, but also any credits, exemptions, or exclusions. See *Maryland v. Louisiana*, 451 U.S. 725, 756 (1981) (Invalidating Louisiana tax on use of natural gas in the state in part because allowing credits only to those engaged in in-state economic activity effectively immunized local interests from the tax); see also *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 211 (1994) (Scalia, J., concurring) (" [E]xemption' from or 'credit' against a 'neutral tax' . . . no different in principle" than tax that directly discriminates against out-of-state interests). Various tax exemptions or credits have been held to violate the Commerce Clause. See, e.g., *Camps Newfoundland/Owatonna, Inc. v. Town of Harrison, Maine*, 520 U.S. 564 (1997) (Invalidating property tax exemption for charitable institutions that was limited to institutions serving principally state residents); *New Energy Co. of Indiana v. Limbach*, 486 U.S. 269 (1988) (Invalidating Ohio statute that provided tax credit for sales of ethanol produced in-state, but not ethanol produced in certain other states).

"[A] tax may violate the Commerce Clause if it is facially discriminatory, has a discriminatory intent, or has the effect of unduly burdening interstate commerce." *Amerada Hess Corp. v. Director, Div. of Taxation*, 490 U.S. 66, 75 (1989). "If a restriction on commerce is

discriminatory, it is virtually *per se* invalid." *Oregon Waste Systems*, 511 U.S. at 99. A discriminatory law will be invalidated unless "it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory means." *Id.* at 100 (*quoting New Energy Co. of Ind. v. Limbach*, 486 U.S. 2169, 278 (1988)). "By contrast, nondiscriminatory regulations that have only incidental effects on interstate commerce are valid unless 'the burden imposed on such commerce is clearly excessive in relation to the putative local benefits.'" *Oregon Waste Systems*, 511 U.S. at 99 (*quoting Pike v. Bruce Church*, 397 U.S. 137, 142 (1970)).

Op. Att'y Gen. No. 18-001 at 5-6.

Both resident and nonresident individuals are subject to Nebraska income tax. *See* Neb. Rev. Stat. § 77-2715(1) (Cum. Supp. 2016). Resident individuals are taxed on their "entire net income," while nonresident individuals are taxed on income "derived from sources within" Nebraska. *Id.* Both resident and nonresident estates and trusts, and their beneficiaries, are subject to Nebraska income tax. Neb. Rev. Stat. § 77-2717 (Cum. Supp. 2016). Corporations are also subject to income tax. Neb. Rev. Stat. § 77-2734.02(1) (Cum. Supp. 2016).<sup>1</sup> Nebraska income tax also applies to resident and nonresident partners of partnerships, as well as resident and nonresident shareholders of Subchapter S corporations or members of limited liability companies. Neb. Rev. Stat. §§ 77-2727 (Cum. Supp. 2016) and 77-2734.01 (Cum. Supp. 2016).

Under LB 829, one of the legislative proposals addressed in our recent opinion, a refundable income tax credit was allowed "to each taxpayer...in the amount of fifty percent of the school district taxes levied on the taxpayer's property and paid by the taxpayer during [the] taxable year." LB 829, § 3. While "taxpayer" was not defined, we noted "it presumably refer[ed] to all taxpayers subject to Nebraska income tax." Op. Att'y Gen. No. 18-001 at 7. As noted, "taxpayers" subject to Nebraska income tax can include both resident and nonresident individuals and entities. We concluded that, "by stating 'each taxpayer' [was] entitled to the credit, we interpret[ed] the bill to extend the credit to any taxpayer subject to the Nebraska income tax, resident or nonresident." *Id.* As "[a]vailability of the credit [was] based on whether a person or entity [was] subject to Nebraska income tax and pa[id] property tax in Nebraska, not residency..." we concluded "the bill [did] not discriminate on its face against nonresidents subject to Nebraska income tax." *Id.*

We noted, however, that LB 829's limitation of the credit to persons or entities subject to Nebraska income tax "result[ed] in different treatment of some nonresidents." *Id.* Specifically, we stated:

In this regard, nonresidents who do not have income sourced to Nebraska and are thus not subject to income tax, but own property on which taxes are paid, would receive no income tax credit. While this may not impact a significant number of nonresidents, there is no "de minimis" defense to a

charge of discriminatory taxation under the Commerce Clause." *Fulton Corp. v. Faulkner*, 516 U.S. 325, 334 n.3 (1996). The income tax credit is intended to provide tax relief to property taxpayers. By allowing the credit only to those subject to income tax, some property taxpayers (nonresidents that pay property taxes but are not subject to income tax) are denied relief. This discrimination against certain nonresidents would disfavor primarily out-of-state interests, which the Commerce Clause prohibits absent a showing that limiting the credit advances a legitimate local interest that cannot adequately be served by nondiscriminatory alternatives. Accordingly, to remove any potential impermissible discrimination, the credit should be extended to all property taxpayers, resident and nonresident, whether or not they are subject to Nebraska income tax. As the credit is refundable, a mechanism should be created to allow the credit to be claimed by those not otherwise subject to Nebraska income tax.

Op. Att'y Gen. No. 18-001 at 7-8.

While rules governing the interpretation of statutes generally apply to constitutional provisions, constitutional provisions "receive a broader and more liberal construction than statutes." *Hall v. Progress Pig, Inc.*, 259 Neb. 407, 414, 610 N.W.2d 420, 427 (2000). "Constitutional provisions, like statutes, are not open to construction as a matter of course; construction is appropriate only when it has been demonstrated that the meaning of the provision is not clear and therefore that construction is necessary." *Pig Pro Nonstock Coop. v. Moore*, 253 Neb. 72, 81, 568 N.W.2d 217, 223 (1997). "The words and terms of a constitutional provision are to be interpreted and understood in their most natural and obvious meaning, unless the subject indicates or the text suggests that they have been used in a technical sense." *State ex rel. Douglas v. Beermann*, 216 Neb. 849, 853-54, 347 N.W.2d 297, 301 (1984).

The language of the legislative resolution proposing to amend the constitution to provide a refundable income tax credit makes no distinction based on residency or Nebraska income tax liability. Rather, it states a credit is provided against Nebraska income tax in an amount equal to thirty-five percent of property taxes "levied on real property located in this state" and "[p]aid by the taxpayer during the taxable year." Unlike LB 829, which utilized the term "taxpayer" to refer to a person or entity subject to Nebraska income tax, the legislative resolution uses the term "taxpayer" to refer to the person or entity paying property taxes on real property in Nebraska. Thus, qualification for the credit is based on payment of real property taxes in Nebraska, not residency of the taxpayer, or the taxpayer being subject to Nebraska income tax.<sup>2</sup> As the refundable income tax credit provided by this resolution would be available to any real property taxpayer, there would be no potential for improper discrimination against nonresidents or out-of-state interests which could run afoul of the Commerce Clause.

### **B. Discrimination Against Non-Resident Nebraska Property Taxpayers.**

Your second question, which asks if the proposed constitutional amendment would impermissibly "discriminate against non-resident Nebraska property taxpayers," does not identify any specific constitutional provision which the amendment may violate. As it pertains to unconstitutional discrimination against non-residents, it is appropriate to consider if the proposal violates the Privileges and Immunities Clause. U.S. Const. art. IV, § 2. That clause provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens of the several States."

The object of the Privileges and Immunities Clause is to "strongly...constitute the citizens of the United States one people," by "plac[ing] the citizens of each State upon the same footing with citizen of other States, so far as the advantages resulting from citizenship in those States are concerned." *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1868). "[T]he clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade, or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State; and to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens." *Ward v. Maryland*, 79 U.S. (12 Wall.) 418, 430 (1870).<sup>3</sup>

"Like many other constitutional provisions, the privileges and immunities clause is not an absolute." *Toomer v. Witsell*, 334 U.S. 385, 396 (1948) [*Toomer*"]. As explained in *Toomer*, the clause proscribes

discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States. But it does not preclude disparity of treatment in the many situations where there are perfectly valid independent reasons for it. Thus, the inquiry in each case must be concerned with whether such reasons do exist and whether the degree of discrimination bears a close relationship to them. The inquiry must also, of course, be conducted with due regard for the principle that the States should have considerable leeway in analyzing local evils and in prescribing appropriate cures. 334 U.S. at 396.

Thus, in analyzing whether a law distinguishing between residents and nonresidents contravenes the Privileges and Immunities Clause, the inquiry focuses on whether "(i) there is a substantial reason for the difference in treatment; and (ii) the discrimination against nonresidents bears a substantial relationship to the State's objective." *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 284 (1985).

State laws which deny nonresidents a general tax exemption or deduction without substantial justification have been held to violate the Privileges and

Immunities Clause. *See, e.g., Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998) (No substantial justification supported statute that effectively denied only nonresident taxpayers an income tax deduction for alimony paid.); *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60 (1920) ["*Travis*"] (Invalidating statute that denied only nonresidents an exemption from tax on a certain threshold of income.). States may, however, limit nonresidents' deductions of business expenses and nonbusiness deductions based on the relationship between those expenses and in-state property or income. *Schaffer v. Carter*, 252 U.S. 37 (1920) (Upholding Oklahoma statute denying deductions for out-of-state losses to nonresidents who were subject to Oklahoma's tax on in-state income.); *Travis*, 252 U.S. at 75-76 (Recognizing that *Schaffer* "settled...[t]hat there is no unconstitutional discrimination against citizens of other states in confining the deduction of expenses, losses, etc., in the case of nonresident taxpayers, to such as are connected with income arising from sources within the taxing state."). Statutes limiting property tax relief or credits to resident property owners have been held to violate the Privileges and Immunities Clause. *Borden v. Selden*, 259 Iowa 808, 146 N.W.2d 306 (1966) (Invalidating agricultural land tax credit applicable only to land owned by residents.); *Opinion of the Judges*, 81 S.D. 629, 140 N.W.2d 34 (1966) (Definition of "individual taxpayer" qualified to receive distributions of tax relief in the form of a credit and refund was unconstitutional as it was limited to resident owners of real or personal property.).

In *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967), the Nebraska Supreme Court held that allowing only residents a "food sales tax credit" against Nebraska income tax did not constitute unjust or unreasonable discrimination under the Privileges and Immunities Clause. Initially, the court noted that the credit was part of the sales tax rather than the income tax, and it "seem[ed] reasonable for the Legislature to determine that generally a state sales tax on food for personal use will be paid almost universally by residents of the state, while purchases of such foods in the state by nonresidents are ordinarily minimal." *Id.* at 405, 155 N.W.2d at 330. It emphasized that the cases cited to support the claim the credit was invalid were "either property tax cases or income tax cases involving personal exemptions," not sale tax cases. *Id.* at 407, 155 N.W.2d at 331. The court found that, "[v]iewed as a form of state sales tax exemption, the classification between residents and nonresidents as to the credit or refund of sales taxes on food for personal use is supported by valid independent reasons other than mere residence." *Id.* Nor would the result be different if the credit were treated as part of the income tax, as "[a] credit or deduction on income tax for sales taxes paid on food for personal use should logically be treated as a personal expense deduction, as opposed to a business expense deduction." *Id.* The court concluded by stating:

In our opinion, there are substantial reasons for the disparity of treatment between residents and nonresidents and the classification is not discriminatory nor arbitrary. Many facts support this classification, whether the credit, refund, or deduction, be viewed from the aspect of a

sales tax or an income tax. The Legislature may have been of the opinion that food purchases for personal use are so closely related to the state of residence, particularly with respect to the imposition of a state sales tax, that any exemption, credit, deduction, or refund should be allowed only by the state of residence and not by every other state in which some part of the taxpayer's income might be found and taxed. The wisdom of such a legislative policy is a matter for legislation rather than judicial decision. We hold that the allowance and limitation of the food sales tax credit only to residents does not constitute unjust or unreasonable discrimination under the privileges and immunities and equal protection clauses of the Fourteenth Amendment. 182 Neb. at 408, 155 N.W.2d at 332.

As noted in response to your first question, the language of the legislative resolution proposing to amend the constitution to provide a refundable income tax credit makes no distinction based on residency or Nebraska income tax liability. Rather, it states a credit is provided against Nebraska income tax in an amount equal to thirty-five percent of property taxes "levied on real property located in this state" and "[p]aid by the taxpayer during the taxable year." Thus, qualification for the credit is based on payment of real property taxes in Nebraska, not residency of the taxpayer, or the taxpayer being subject to Nebraska income tax. As the refundable income tax credit provided by this resolution would be available to any real property taxpayer, there would be no potential for improper discrimination against nonresidents that would violate the Privileges and Immunities Clause.

#### CONCLUSION

The refundable income tax credit provided under the proposed constitutional amendment is not limited to Nebraska residents. Accordingly, it does not discriminate against nonresidents or primarily out-of-state interests in violation of the Commerce Clause. Also, as eligibility for the credit is not limited to Nebraska residents, it does not run afoul of the Privileges and Immunities Clause.

Very truly yours,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) L. Jay Bartel  
Assistant Attorney General

pc Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
07-1109-29

<sup>1</sup> Corporations operating as a unitary business both within and outside Nebraska determine taxable income by use of an apportionment formula. Neb. Rev. Stat. §§ 77-2734.05 and 77-2734.06 (2009).

<sup>2</sup> The proposed amendment requires the Legislature to "provide by law" for the refundable credit. Thus, to be consistent with the language of the amendment, legislation to implement the credit must provide a means for all property taxpayers, resident or non-resident, to claim the credit, whether or not they are subject to Nebraska income tax.

<sup>3</sup> While the terms "resident" and "citizen" are not synonymous, "a general taxing scheme...[that] discriminates against all nonresidents, has the necessary effect of including in the discrimination those who are citizens of other states." *Travis v. Yale & Towne Mfg. Co.*, 252 U.S. 60, 79 (1920).

Opinion 18-006

SUBJECT: Whether the Nebraska Legislature's Archived Videos of Committee Hearings and Floor Debates Are "Public Records" Under the Nebraska Public Records Statutes

REQUESTED BY: Senator Suzanne Geist  
Nebraska State Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General  
Leslie S. Donley, Assistant Attorney General

You have requested an opinion from this office with respect to the "archived videos of committee hearings and floor debate" of the Nebraska Legislature. You indicate that you are contemplating introducing legislation that would explicitly make the videos public records, but would like us to clarify whether legislation is needed. In your opinion request letter, you state that Patrick J. O'Donnell, Clerk of the Nebraska Legislature, testified on Legislative Bill 1018,<sup>1</sup> a bill you introduced during the 2018 legislative session. Mr. O'Donnell stated that the Nebraska Legislature has "significant quantities of digitized files that are maintained both on our server system as well as backup files at NET [Nebraska Educational Television]," and that the Legislature owned the files.<sup>2</sup> You further indicate that transcribers and committee clerks have access to the archived videos, "but other legislative employees, senators and the public are denied access."

**PREVIOUS DISPOSITION**

On May 1, 2018, this office issued its disposition in *File No. 18-R-113; Clerk of the Legislature; Debra A. Portz, Petitioner ("Portz")*<sup>3</sup> This letter was written in response to a petition submitted to our office under Neb. Rev. Stat. § 84-712.03(1)(b) (2014, 2018 Neb. Laws LB 193) of the Nebraska Public Records Statutes, Neb. Rev. Stat. §§ 84-712 to 84-712.09 (2014, Cum. Supp. 2016<sup>4</sup>) ("NPRS"). Under § 84-712.03(1)(b), any person denied any rights granted under §§ 84-712 to 84-712.03 may petition the Attorney General to determine whether the petitioner has been denied access to public

records, or whether the public body involved is otherwise not in compliance with the provisions of the NPRS.

The petitioner in *Portz* had submitted a public records request to the Clerk of the Legislature seeking a copy of archived videos of floor debate for legislative bill 295 for two days in March 2018. The petitioner noted that written transcripts of the floor debate were not currently available. Mr. O'Donnell denied the request, indicating that the Legislature does not make audio and video files available because they are not considered "official records." Mr. O'Donnell explained that the audio and video files are not public records themselves, but are electronic files used by legislative staff to create transcripts of the proceedings. According to Mr. O'Donnell, the *transcripts* constitute the official public records of legislative committee hearings and floor debate. The transcripts are then made available to the public through the Legislature's website or upon request to the Clerk's office. In lieu of providing a copy of the video, Mr. O'Donnell offered to provide the petitioner a rough draft transcript.

In addition to his position that audio and video recordings of legislative proceedings do not constitute "public records," Mr. O'Donnell noted other concerns associated with producing the audio and video files in his denial letter, including: (1) the costly storage requirements and the need for staff to manage the files; (2) issues associated with authenticating the files for administrative and judicial proceedings; (3) lack of staff to handle requests for the files if offered to the public; (4) lack of technology (hardware, software, and trained staff) to manage the files; and (5) the lack of search capability for extremely large files. Mr. O'Donnell also argued that Neb. Rev. Stat. § 84-712(3)(e) did not require his office to produce public records in a different format from that of the original public record. Mr. O'Donnell indicated that the Legislature's Executive Board considered this issue twice in the last three years, and has not changed its policy denying release of archived video. He asserted that making transcripts available via the Legislature's "website is the most viable, cost-efficient way to serve the public and maintain our Legislature's historical commitment to providing openness and transparency." *Portz* at 2.

Upon review, we determined that the audio and video recordings of committee hearings and floor debate fell within the definition of public records set out in the NPRS. We also determined that there was no statutory basis to withhold the recordings. We rejected the notion that producing copies of the recordings would require the Clerk's office to produce records "in a new or different format modified from that of the original public record," noting that the recordings currently exist as a digital record and could be produced as a digital record. Under these circumstances, the written transcripts represent a new and different format, not the recordings themselves. As a result of our findings, we directed Mr. O'Donnell to produce the requested recordings to the petitioner at his earliest possible convenience.



**DISCUSSION**

The relevant statute governing public records is set out in Neb. Rev. Stat. § 84-712 (2014). That statute provides, in pertinent part, that

[e]xcept as otherwise expressly provided by statute, all citizens of this state and all other persons interested in the examination of the public records as defined in section 84-712.01 are hereby fully empowered and authorized to (a) examine such records, and make memoranda, copies using their own copying or photocopying equipment in accordance with subsection (2) of this section, and abstracts therefrom, all free of charge, during the hours the respective offices may be kept open for the ordinary transaction of business and (b) except if federal copyright law otherwise provides, obtain copies of public records in accordance with subsection (3) of this section during the hours the respective offices may be kept open for the ordinary transaction of business.

This basic language guaranteeing access to governmental records has been in existence since 1866. In 1979, the Nebraska Legislature enacted the following definition of "public records":

Except when any other statute expressly provides that particular information or records shall not be made public, public records shall include all records and documents, regardless of physical form, of or belonging to this state, any county, city, village, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form shall remain a public record when maintained in computer files.

1979 Neb. Laws LB 86, § 2,<sup>5</sup> codified at Neb. Rev. Stat. § 84-712.01(1) (2014).

However, access to records is not absolute. An exception exists "when any other statute expressly provides that particular information or records shall not be made public . . . ." <sup>6</sup> In addition, Neb. Rev. Stat. § 84-712.05 currently contains twenty-one categories of public records that may be withheld at the discretion of the public body involved so long as those records have not been "publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by a public entity pursuant to its duties . . . ." Neb. Rev. Stat. § 84-712.08 permits the suspension of certain provisions of the NPRS and the Open Meetings Act<sup>7</sup> when the application of those provisions would result in the loss of federal funds, services or essential information available to a state agency.

In Nebraska, statutory language is to be given its plain and ordinary meaning; an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous.

*Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 907 N.W.2d 301 (2018); *Farmers Cooperative v. State*, 296 Neb. 347, 893 N.W.2d 728 (2017). In discerning the meaning of a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense. *Id.*; *Davis v. Gale*, 299 Neb. 377, 908 N.W.2d 618 (2018). It is not within the province of the courts to read a meaning into a statute that is not there or to read anything direct and plain out of a statute. *Aksamit*, 299 Neb. at 123, 907 N.W.2d at 308; *State v. Gilliam*, 292 Neb. 770, 781, 874 N.W.2d 48, 57 (2016). When the Legislature provides a specific definition for purposes of a section of an act, that definition is controlling. *Farmers*, 296 Neb. at 356, 893 N.W.2d at 736.

The definition of "public records" encompasses "all records and documents, regardless of physical form, of or belonging to . . . any . . . branch . . ." Courts often turn to dictionaries to ascertain a word's plain and ordinary meaning. *Gilliam*, 292 Neb. at 781, 874 N.W.2d at 57. For example, "record" in this context may be defined as "1. [a] documentary account of past events, usu. designed to memorialize those events. 2. information that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form." BLACK'S LAW DICTIONARY 1301 (10<sup>th</sup> ed. 2014). "Physical" is defined as "having material existence: perceptible especially through the senses and subject to the laws of nature."<sup>8</sup> "Form" relates to "one of the different modes of existence, action, or manifestation of a particular thing or substance: kind."<sup>9</sup> The phrase "of or belonging to," construed in *Everton v. City of Kimball*, 278 Neb. 1, 767 N.W.2d 751 (2009), "includes any documents or records that a public body is entitled to possess—regardless of whether the public body takes possession. The public's right of access should not depend on where the requested records are physically located." *Id.* at 9, 767 N.W.2d at 759. The word "branch" denotes a "division of an institution [the executive, legislative, and judicial branches of government]." BLACK'S LAW DICTIONARY 199 (10<sup>th</sup> ed. 2014).

The archived video recordings of committee hearings and floor debate are documentary accounts of legislative proceedings. The recordings are produced and stored in an electronic medium. The recordings are retrieved by legislative staff for the purpose of preparing written transcripts of the proceedings. While NET broadcasts and streams the proceedings, and maintains a copy of the broadcasts, the Nebraska Legislature retains ownership of the content. See *infra* at 1. In this regard, there is no question that the recordings are "of or belonging to" the Nebraska Legislature. It is also axiomatic that the Nebraska Legislature is a branch of Nebraska state government. "The powers of the government of this state are divided into three distinct departments, the legislative, executive, and judicial . . ." Neb. Const. art. II, § 1. "The legislative authority of the state shall be vested in a Legislature consisting of one chamber." Neb. Const. art. III, § 1. Applying the plain and ordinary meaning of these terms to the definition of public

records in § 84-712.01(1) leads us to conclude, without equivocation, that recordings of legislative proceedings are public records.

Moreover, we are unaware of any other statute that would make the recordings not a public record.<sup>10</sup> And there is no exception in § 84-712.05 that would allow the Clerk, at his discretion, to withhold the recordings from disclosure. This fact is plainly evidenced by the attempt to add "[a]udio and video recordings of the proceedings of the Legislature or of a committee or division of the Legislature" to § 84-712.05 during the last legislative session. The waiver provisions in § 84-712.08 do not apply to the Nebraska Legislature. Consequently, since the recordings at issue fall within the definition of public records set out in § 84-712.01(1), and there is no statute that otherwise provides that the records are not public records or, alternatively, are public records but may be withheld, the recordings must be made available to a Nebraska citizen or other interested person in response to a request made under § 84-712.

"[T]he Legislature exercises a power constitutionally committed to it by enacting statutes to declare what is the law and public policy." *State ex rel. Veskrna v. Steel*, 296 Neb. 581, 598, 894 N.W.2d 788, 800 (2017). "In enacting the public records statutes, the Legislature has determined that the welfare of the people is best served through liberal public disclosure of the records of the three branches of government." *Id.*; *Aksamit*, 299 Neb. at 122, 907 N.W.2d at 307 (2018). "Nebraska, like the federal government and many other states, has broad public records laws that generally provide open access to governmental records." *State ex rel. Adams Cty. Historical Society v. Kinyoun*, 277 Neb. 749, 754, 765 N.W.2d 212, 217 (2009). In view of these legal principles, the Legislature's long-held policy that the recordings of committee hearings and floor debate are not public records is untenable. Consequently, we would strongly suggest that the Legislature take affirmative steps, either independently or in conjunction with NET, to resolve the ongoing issues and concerns relating to producing copies of the recordings in response to public records requests made pursuant to § 84-712. Alternatively, the Legislature should consider legislation which would allow the Clerk to withhold the recordings at his discretion.

### CONCLUSION

Based on the foregoing, we conclude that archived video of floor debate and committee hearings are public records under the NPRS. No other statutory provisions exist which would allow the recordings to be kept confidential. Consequently, in light of our conclusion, there is no need for you to pursue clarifying legislation on this matter at this time.

Sincerely,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) Leslie S. Donley  
Assistant Attorney General

pc: Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
49-2080-29

<sup>1</sup> LB 1018 contained three components. First, it established that audio and video recordings of legislative proceedings are not the "official records" of the proceedings and are not "admissible in any proceeding as evidence of legislative history, actions, or intent." Second, it created a requirement for "[a]ny government web site offering access to audio and video recordings" of legislative proceedings to notify users that the recordings "shall not be used for political or commercial purposes." Third, the bill added "[a]udio and video recordings of the proceedings of the Legislature or of a committee or division of the Legislature" to the list of public records that could be withheld from disclosure at the discretion of the lawful custodian. *See* Neb. Rev. Stat. § 84-712.05. LB 1018 did not advance from committee.

<sup>2</sup> *See* Hearing of the Executive Board on LB 1018, 105<sup>th</sup> Neb. Leg., 2<sup>nd</sup> Sess. (Jan. 31, 2018) at 12.

<sup>3</sup> Accessible at <https://ago.nebraska.gov/sites/ago.nebraska.gov/files/doc/18-R-113%3B%20Clerk%20of%20the%20Legislature%3B%20Debra%20A.%20Portz%2C%20Petitioner.pdf>.

<sup>4</sup> *See also* 2018 Neb. Laws LB 859 and 2018 Neb. Laws LB 902.

<sup>5</sup> "The whole theory [of LB 86] is, the documents prepared by public agencies are public except if another statute already makes them not public or if they are listed in these particular seven exceptions [enumerated later in the bill]." Hearing of the Government, Military and Veterans Affairs Committee on LB 86, 86<sup>th</sup> Neb. Leg., 1<sup>st</sup> Sess. (Feb. 9, 1979) at 4.

<sup>6</sup> *See, e.g.*, Neb. Rev. Stat. § 29-2261 (2016, 2018 Neb. Laws LB 841 and LB 1034) ("Any presentence report, substance abuse evaluation, or psychiatric examination shall be privileged . . ."); Neb. Rev. Stat. § 32-301 (2016, Supp. 2017, 2018 Neb. Laws LB 1065 [eff. 7/1/2019]) ("The digital signatures [relating to voter registration list] in the possession of the Secretary of State, the election commissioner, or the county clerk shall not be public records as defined in section 84-712.01 and are not subject to disclosure under sections 84-712 to 84-712.09."); Neb. Rev. Stat. § 47-912 (Supp. 2017) ("Reports of investigations conducted by the office [of the Inspector General of the Nebraska Correctional System] are not public records for purposes of sections 84-712 to 84-712.09."); and Neb. Rev. Stat. § 77-3510 (Supp. 2017, 2018 Neb. Laws LB 1089) ("The [homestead exemption] application and information contained on any attachments to the application shall be confidential and available to tax officials only.").

<sup>7</sup> Neb. Rev. Stat. §§ 84-1407 to 84-1414 (2014, Cum. Supp. 2016, Supp. 2017).

<sup>8</sup> See <https://www.merriam-webster.com/dictionary/physical> last accessed September 18, 2018.

<sup>9</sup> See <https://www.merriam-webster.com/dictionary/form> last accessed September 18, 2018.

<sup>10</sup> See *Aksamit Resource Mgmt. v. Nebraska Pub. Power Dist.*, 299 Neb. 114, 127, 907 N.W.2d 301, 310 (2018) (Concluding that the district's competitive information could not be withheld under the exception in § 84-712.05(3) of the NPRS, but noting that it would not hesitate to apply the "other statute" exception in § 84-712.01(1), "and the general principle favoring a specific over a general statute," to exclude the information from disclosure.).

#### Opinion 18-007

SUBJECT: Whether the fees charged to participants in the Nebraska Educational Savings Plan Trust are public funds and whether the Legislature may transfer an excess of those fees into the General Fund.

REQUESTED BY: Senator John P. Stinner, Nebraska State Legislature  
Don Stenberg, Nebraska State Treasurer

WRITTEN BY: Douglas J. Peterson, Attorney General  
Natalee J. Hart, Assistant Attorney General

#### INTRODUCTION

You have each requested our opinion on questions which have followed the issuance of Op. Att'y Gen. 18-003 (July 18, 2018) relating to an account which was maintained by the State Treasurer for the purpose of paying administrative costs associated with the Nebraska Educational Savings Plan Trust. In our prior opinion, we determined that the monies held in that account by the State Treasurer (designated the "Fee Account" therein) must be deposited in an account set up for that purpose by the Legislature, the "Expense Fund." However, we declined to opine on the question of whether the funds in that account were "public funds," as such a determination was unnecessary at that time. You have both now asked us to issue an opinion on this issue. Senator Stinner has posed the following question:

- (1) Were the "Fee Account" funds, as reported under the Auditor's August 14, 2018, attestation report, "money of the state" (or "public money" or "public funds") for purposes of Neb. Rev. Stat. § 84-602 (Cum. Supp. 2016)?

Senator Stinner has indicated that he intends to bring legislation concerning this issue; accordingly, it is now appropriate for us to opine on the nature of the funds in the Expense Fund.<sup>1</sup> Treasurer Stenberg has also asked us to opine on this same question. Additionally, Treasurer Stenberg has posed two other questions to this office:

- (2) Whether the portion of Neb. Rev. Stat. § 85-1807(4), which authorizes the Legislature to transfer funds from the Expense Fund of the Nebraska Educational Savings Trust to the General Fund, is constitutional?
- (3) If the Legislature were to transfer funds from the College Savings Plan Expense Fund to the General Fund, would that be a violation of federal securities law?

### **BACKGROUND**

In Op. Att'y Gen. No. 18-003 we were asked by the State Treasurer and the State Auditor to opine as to whether the Treasurer was permitted to maintain a bank account outside of the state accounting system, which served to pay expenses related to the Nebraska Educational Savings Plan Trust ("NESPT") fund. The funds in that outside account originated with fees charged to investors. We determined that because Neb. Rev. Stat. § 85-1807 specifically provided for the deposit of such fees in the "Expense Fund," the Treasurer was required to utilize that fund and not an outside account. In Op. Att'y Gen. No. 18-003 we were concerned primarily with whether the Treasurer could maintain a bank account outside of the state accounting system in which to deposit and store these fees; we were not concerned with the nature of the funds, as the character of the funds was inapplicable to the question of where the funds were statutorily required to be deposited. Consequently, we declined to opine as to whether the funds in the Expense Fund were public funds. This opinion will now examine that question and related questions posed by the Treasurer.

The State Treasurer has been granted duties and responsibilities to implement and administer NESPT, a public trust established for investment by individuals for future educational use. Neb. Rev. Stat. §§ 85-1801 through 85-1814 (2014). The Legislature has established three separate funds for the State Treasurer to administer in relation to NESPT: (1) The College Savings Plan Program Fund ("Program Fund"), (2) the College Savings Plan Expense Fund ("Expense Fund"), and (3) the College Savings Plan Administrative Fund ("Administrative Fund"). Neb. Rev. Stat. § 85-1807(1). The State Treasurer is required to deposit money received by the trust into the appropriate fund and the funds "shall be separately administered." *Id.* Money in each of the funds is to be invested by the State Investment Officer when such funds are available. Neb. Rev. Stat. § 85-1807(2)-(4). The Program Fund consists of all deposits and investment income from investors in NESPT. Neb. Rev. Stat. § 85-1807(2).

In implementing NESPT, the Treasurer is permitted to "establish, impose, and collect administrative fees and charges in connection with transactions of the trust, and provide for reasonable service charges, including penalties for cancellations and late payments with respect to participation agreements." Neb. Rev. Stat. § 85-1804(10) (2014). The administrative fees authorized by this statute are to be deposited into the Expense Fund.

The expense fund shall be used to pay costs associated with the Nebraska educational savings plan trust and shall be funded with fees assessed to the program fund. . . . Transfers may be made from the expense fund to the General Fund at the direction of the Legislature. Any money in the expense fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

Neb. Rev. Stat. § 85-1807(4).

The Legislature appropriates funds from the Expense Fund into the Administrative Fund in order to pay the costs of "administering, operating, and maintaining" the NESPT trust. Neb. Rev. Stat. § 85-1807(3). No General Fund appropriations are to be used to operate NESPT. Neb. Rev. Stat. § 85-1807(1). Neb. Rev. Stat. § 85-1813 provides that the assets of the Program Fund are to be held in trust for the participants and beneficiaries and no property rights exist in the State to this fund, but expressly excludes the Administrative Fund and the Expense Fund from these stipulations:

The assets of the Nebraska educational savings plan trust, including the program fund and excluding the administrative fund and the expense fund, shall at all times be preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries. No property rights in the trust shall exist in favor of the state. Such assets of the trust shall not be transferred or used by the state for any purposes other than the purposes of the trust.

Your questions concern whether the monies found in the Expense Fund are "public funds" and whether those funds may be lawfully transferred from the Expense Fund to the General Fund as authorized by Neb. Rev. Stat. § 85-1807(4). Our responses to your questions are set out below.

### **ANALYSIS**

#### **Whether the funds in the Expense Fund are "public funds."**

Your first question as posed to us is whether the "Fee Account" funds, as reported under the Auditor's August 14, 2018, attestation report, are "money of the state" (or "public money" or "public funds") for purposes of Neb. Rev. Stat. § 84-602 (Cum. Supp. 2016). As the funds which were maintained in the "Fee Account" as referenced in Op. Att'y Gen. No. 18-003 were transferred to the Expense Fund in August 2018, we will rephrase your

question to be whether the funds in the Expense Fund, derived directly from fees charged of NESPT participants, are public funds or monies of the state.

Neb. Rev. Stat. § 84-602 provides, in pertinent part, that "[i]t shall be the duty of the State Treasurer: (1) [t]o receive and keep all money of the state not expressly required to be received and kept by some other person . . . ." The phrase "money of the state" is not defined for purposes of § 84-602(1). "Money of the state" is also often referred to as "public funds." "Public funds" is defined only once in Nebraska statute, in relation to the budgets of cities, counties, and other political subdivisions. While not directly germane to the question before us, Neb. Rev. Stat. § 13-503(7) (Cum. Supp. 2016) may provide some insight as to what "public funds" means in Nebraska: "[p]ublic funds means all money, including nontax money, used in the operation and functions of governing bodies."

Absent a statutory definition, "money of the state" or "public funds" should be given its plain and ordinary meaning. *See In re Interest of Jeremy T.*, 257 Neb. 736, 600 N.W.2d 747 (1999). Where the words of a statute are plain, direct, and unambiguous, no interpretation is necessary to ascertain their meaning. *Governors of Knights of Ak-Sar-Ben v. Dep't of Revenue*, 217 Neb. 518, 349 N.W.2d 385 (1984); *Garreans v. City of Omaha*, 216 Neb. 487, 345 N.W.2d 309 (1984). A court will not read meaning into a statute that is not warranted by the legislative language, and it will not read anything plain, direct, and unambiguous out of a statute. *State ex rel. Douglas v. Herrington*, 206 Neb. 516, 294 N.W.2d 330 (1980). "Public funds" are commonly defined as "[t]he revenue or money of a governmental body" while "general fund" is defined as "[a] government's primary operating fund . . . A general fund is distinguished from assets of a special character such as trust, escrow, and special purpose funds." Black's Law Dictionary 682 (7th ed. 1999).

We have indicated previously that "state funds" involve monies which are generated by the operation of general state law such as state fees and state taxes. "[T]he Nebraska Supreme Court and other authorities define public funds as those funds belonging to the state or a political subdivision that the state has collected in accordance with general law." Op. Att'y Gen. No. 07016, p. 2 (September 24, 2007). Funds are not public funds when they have been segregated for a specific use and cannot lawfully be used for any other purpose. *Id.* "Special purpose funds in the custody of the State that are earmarked for particular purposes are not public funds." *Id.* In distinguishing between state and nonstate funds, we have maintained that "[s]tate funds are those monies which are generated by state fees or state taxes. Nonstate funds are those which the state receives from outside sources." Op. Att'y Gen. No. 87114, p. 1 (December 9, 1987). "[N]onstate funds must be appropriated for purposes defined by the sources of the funds." *Id.* at 2. Custodial funds held for a specific purpose are not state monies. Merely depositing funds within a state treasury does not in itself make them state funds;<sup>2</sup> "only monies raised by operation of some general state law become state funds." Op. Att'y Gen. No. 87001, p. 1 (January 6, 1987).<sup>3</sup>



Neb. Rev. Stat. § 85-1807(4) provides that the Expense Fund "shall be used to pay costs associated with the [NESPT] trust." Neb. Rev. Stat. § 85-1807(3) provides that the Administrative Fund is to be funded by appropriation from the Expense Fund and "shall be utilized to pay for the costs of administering, operating, and maintaining the trust. . ." However, Neb. Rev. Stat. § 85-1807(4) further provides that "transfers may be made from the expense fund to the General Fund at the direction of the Legislature." We must also be cognizant of the express exclusion of the Expense Fund from the trust created from the Program Fund and the requirement that the funds invested by participants be "preserved, invested, and expended solely and only for the purposes of the trust and shall be held in trust for the participants and beneficiaries." Neb. Rev. Stat. § 85-1813. Further, while as to the Program Fund the state has no property rights and may not transfer or use those assets for any purpose other than the trust, the same prohibition is not made as to the Expense Fund or the Administrative Fund. *Id.*

These statutes provide conflicting indications of the nature of the Expense Fund as public or nonpublic and we must attempt to reconcile their meaning. We are guided by the following principles in that undertaking. Effect must be given to every word of a statute, since the Legislature is presumed to have intended every provision of a statute to have a meaning. *Iske v. Papio Nat. Resources Dist.*, 218 Neb. 39, 352 N.W.2d 172 (1984). Different provisions of a statute must be reconciled to make them logical, harmonious, and sensible. *Ledwith v. Bankers Life Ins. Co.*, 156 Neb. 107, 54 N.W.2d 409 (1952). In determining legislative intent, it is necessary to examine the statute as a whole, in light of its objects and purposes. *See Sorensen v. Meyer*, 220 Neb. 457, 370 N.W.2d 173 (1985); *Adkisson v. City of Columbus*, 214 Neb. 129, 333 N.W.2d 661 (1983).

The State Treasurer's position is that the funds in the Expense Fund are not public funds. In support of this, the Treasurer points us to *Allen v. City of Omaha*, 136 Neb. 620, 286 N.W. 916 (1939) and *Sherard v. State of Nebraska*, 244 Neb. 743, 509 N.W.2d 194 (1993).<sup>4</sup> In *Allen*, the court considered whether a city pension fund for police officers was a "public fund" for purposes of awarding attorney's fees to the prevailing party. The court discussed only the fund which contained participant contributions and investment income, and discussed other similar trust funds, each of which are akin to the Program Fund of NESPT, in holding that the pension fund was not a public fund. The court stated:

"The term 'public funds' means funds belonging to the state or to any county or political subdivision of the state; more specifically taxes, customs, moneys, etc., raised by the operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose; and in this sense it applies to the funds of every political division of the state wherein taxes are levied for public purposes. The term does not apply to special funds, which are collected or voluntarily contributed, for the sole benefit of the

contributors, and of which the state is merely the custodian." In conformity therewith it has been held that a state hail insurance fund raised from hail insurance premiums was not a public fund. A state bonding fund raised from the collection of bond premiums was not a public fund. A state compensation fund maintained by contributions of employers is a special and not a public fund. Funds paid to the state forester for fire protection by those whose property was benefited are not state funds.

*Allen*, 136 Neb. at 625, 286 N.W. at 919 (internal citations omitted). The characteristics of the pension fund contributed to this holding: the pension fund was not raised by taxation but by employee and employer contributions, the pension fund was statutorily segregated for a specific use and could not be used for any other purpose, and the money in the pension fund was held in trust by the city treasurer for the benefit of claimants. *Id.* "In no event do such moneys become the funds of the city. They can be paid out only as provided in the statute creating the fund." *Id.*

In *Sherard*, the court dealt with the Second Injury Fund, which provided compensation in certain workers' compensation cases, and whether a writ of execution could issue against the fund. Because state property is not subject to execution, the issue was whether the money held in the fund was state money. The statutes which established the fund made the State Treasurer the custodian of the fund and specifically provided that the funds were to be held in trust and were not "money or property of the state." *Sherard*, 244 Neb. at 749, 509 N.W. 2d 194, 199.

As we indicated in Op. Att'y Gen. No. 18-003, neither *Allen* nor *Sherard* is directly applicable to the Expense Fund. The funds at issue in each of these opinions are similar to those found in the Program Fund – the funds deposited by the investors, rather than the Expense Fund – the fees charged of the investors. These cases make no mention of fees or administrative charges to participants and whether those fees are public funds. Additionally, the statute establishing the fund in *Sherard* specifically provided that the Second Injury Fund was not money of the state, in contrast to Neb. Rev. Stat. § 85-1813 which excludes the Expense Fund from a similar provision related to NESPT. However, as in each of these cases, the funds in the Expense Fund have been set aside for a particular purpose.

Also relevant to our analysis are the program disclosure statements and participation agreements available to program participants and members of the public. These documents create an expectation on the part of the program participants who invest in one or more of the plans as to what fees will be charged of the fund(s) in which they invest and the intended expenditure of those fees. The plan disclosure documents inform plan participants of a "state Administration Fee to cover administrative costs of overseeing, distributing and marketing the Plan." NEST Direct College Savings Plan Program Disclosure Statement and Participation Agreement, p.

5 (July 23, 2018);<sup>5</sup> TD Ameritrade 529 College Savings Plan Program Disclosure Statement and Participation Agreement, p. 5 (July 23, 2018).<sup>6</sup>

Additionally, plan participants are also advised that their investment plan will be assessed various fees including:

An administration fee equal to 0.02% of the average daily net assets in each Investment Option will be allocated to the state's cost to administer, market, and distribute the Plan. This fee accrues daily as a percentage of average daily net assets and is deducted from each Investment Option. This fee will reduce the value of an account.

NEST Direct College Savings Plan Program Disclosure Statement and Participation Agreement, p. 43; NEST Advisor College Savings Plan Program Disclosure Statement and Participation Agreement, p. 48 (July 23, 2018);<sup>7</sup> TD Ameritrade 529 College Savings Plan Program Disclosure Statement and Participation Agreement, p. 43; State Farm 529 Savings Plan Program Disclosure Statement and Participation Agreement, p. 41 (August 6, 2018).<sup>8</sup> From the language in these plan documents, it seems to us that it would be the reasonable expectation of the plan participants that their fees are utilized only in relation to NESPT.

The Expense Fund is unlike any other fund. These funds originate with fees charged to investors, are collected by the Treasurer, and held in a state fund to be invested by the State Investment Council. In Op. Att'y Gen. No. 18-003 we stated that a court could well determine that these are public funds. However, it is also possible that a court could find these to be nonpublic funds. The unique nature of the fees paid into the Expense Fund leaves us with little precedent to guide our examination of this question. However, we believe that the more persuasive case controlling the nature of the fees to be *Allen v. City of Omaha*. In that case, the court provided direction for what are to be considered "public funds" in Nebraska: "taxes, customs, moneys, etc., raised by the operation of some general law, and appropriated by the government to the discharge of its obligations, or for some public or governmental purpose." *Allen* also provides us with a three-part test for establishing whether funds are public funds: (1) the funds are raised by taxation, (2) are statutorily segregated for a specific use, and (3) are held in trust by an official. *Allen v. City of Omaha*, 136 Neb. 620, 286 N.W.2d 916, 919; *See also Sherard v. State of Nebraska*, 244 Neb. at 750, 509 N.W. 2d 194, 199.

As in *Allen*, the funds in the Expense Fund were not raised by taxation or through a general law, and are segregated by § 85-1807(3)-(4) for a specific use. The Expense Fund is comprised of funds raised from private individuals for a specific purpose: to pay the costs associated with NESPT by program participants, in order that no general funds be used to support NESPT. The Expense Fund is not used for the general operation and function of the Treasurer's Office;<sup>9</sup> it is utilized to pay NESPT expenses and is held by the State Treasurer for this sole purpose.

We recognize the dichotomy created by the language in Neb. Rev. Stat. § 85-1807(3)-(4) versus that in Neb. Rev. Stat. § 85-1813 which specifically excludes the Expense Fund from the prohibition against the assets of the NESPT trust fund being transferred or used by the state for any purposes other than the trust. We resolve that conflict by recognizing that the Expense Fund is intended to be spent by the State Treasurer, after proper appropriation by the Legislature into the Administrative Fund, in order to pay the costs associated with NESPT. Were the Expense Fund part of the assets of the NESPT Trust, and were there a prohibition against transferring the fees, the Legislature would be unable to properly appropriate the funds for expenditure by the Treasurer or examine the expenses related to the NESPT program for propriety. While the State has no custody or control over the assets of the NESPT Trust, which are those monies invested by plan participants, the State must have control over the fees deposited into the Expense Fund in order for the Treasurer to expend them. The State's interest in the Expense Fund is in its proper administration and the payment of appropriate expenses, not in the corpus of the fund. Mere custody of the fees in the Expense Fund and authority of the State Treasurer to spend them does not make monies in the Expense Fund public funds. In our reading of Neb. Rev. Stat. §§ 85-1801 through 85-1814, we believe that the most sensible construction of the act as a whole is that the fees paid by investors are not meant to be public funds made available for the general use of the State of Nebraska.

The funds at issue no longer belong to the individuals paying the fees once they are collected. But neither do we believe that these fees belong to the state. The court in *Allen* held that those funds "were not, strictly speaking, public funds" and did not belong to the City, but were held by the city treasurer for the benefit of claimants. Consequently, we believe the better answer here to be that the Expense Fund is not clearly a public fund and should not be treated as a public fund by the Legislature. We believe these funds, which are earmarked and held by the State Treasurer for the specific purpose of paying expenses of NESPT, must be utilized only for that purpose.

**Whether the portion of Neb. Rev. Stat. § 85-1807(4), which authorizes the Legislature to transfer funds from the Expense Fund of the Nebraska Educational Savings Trust to the General Fund, is constitutional?**

There is currently no imminent Legislative action calling for a transfer of funds from the Expense Fund to the General Fund. As a result, it is unnecessary to opine as to whether this provision is unconstitutional.<sup>10</sup> However, we believe your question can be posed another way: whether the Legislature has the authority to transfer funds from the Expense Fund to the General Fund, when those funds are earmarked for purposes related solely to NESPT and are not clearly public funds. We do not believe it has such authority.

We have previously opined that in order for any state agency to utilize funds, state or nonstate, the Legislature must first make an appropriation. Op. Att'y Gen. No. 87001. "The Legislature must appropriate all funds (both state and non-state) before actual payment can be disbursed from the state. . . . However, nonstate funds must be appropriated for purposes defined by the sources of the funds." Op. Att'y Gen. No. 87114, p. 1-2. Consequently, while the Legislature must appropriate the funds before the Treasurer may expend them, for the reasons already found herein, we do not believe the Legislature may appropriate funds in the Expense Fund to any fund other than the Administrative Fund or for any other purpose than to pay the costs of administering, operating, or maintaining the trust.

**If the Legislature were to transfer funds from the College Savings Plan Expense Fund to the General Fund, would that be a violation of federal securities law?**

We do not believe that the Legislature may transfer funds from the Expense Fund into the General Fund. However, the Treasurer and the legal counsel for the NESPT plans have raised concerns that any transfer of funds from the Expense Fund for purposes other than to pay expenses related to the NESPT funds would run afoul of federal securities law, specifically the anti-fraud provision of the federal Securities Act and the rules of the Securities Exchange Commission. *See* 17 C.F.R. § 240.10b-5; 15 U.S.C. § 77q. These rules prohibit fraud in the marketing and description of a federal security, such as an interest in the Nebraska college savings plan. 17 C.F.R. § 240.10b-5 provides:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- (a) To employ any device, scheme, or artifice to defraud,
- (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Additionally, 15 U.S.C. § 77q (a) contains very similar language prohibiting fraudulent statements in the sale of securities. Neb. Rev. Stat. § 85-1807 and the plan documents provide that the fees charged of participants are to be used to pay expenses related to the plan. We agree with the State Treasurer that these federal provisions give rise to concerns that the transfer of funds out of the Expense Fund for a use other than to pay expenses related to NESPT may be in violation of federal rules related to these college savings plans.

### CONCLUSION

For the reasons set forth above, we believe that the funds in the Expense Fund are not clearly public funds; these are funds held in the custody of the State Treasurer which are earmarked for a particular purpose: to pay expenses related to NESPT. General Funds are explicitly prohibited from being utilized to support NESPT, requiring fees to be charged of participants in order to sustain the program. That they are held by the State Treasurer in a state bank account does not define whether the funds are public funds: the nature of the funds is defined by their origin and intended use. In this case, we believe the better answer to be that these funds are not public funds, must be used only to pay expenses of NESPT, and cannot be transferred by the Legislature for general state purposes.

Sincerely,  
 DOUGLAS J. PETERSON  
 Attorney General  
 (Signed) Natalee J. Hart  
 Assistant Attorney General

pc Patrick J. O'Donnell  
 Clerk of the Nebraska Legislature  
 02-703-29

<sup>1</sup> In Op. Att'y Gen. No. 18-003, that account was referred to as the "Fee Account." As that account has now been closed and the funds moved to the Expense Fund, we will only refer to the Expense Fund in this opinion. *See* Nebraska State Auditor of Public Accounts, Attestation Report of the Nebraska State Treasurer, p. 5 (August 14, 2018), found at [http://www.auditors.nebraska.gov/APA\\_Reports/2018/SA12-08142018-July\\_1\\_2016\\_through\\_December\\_31\\_2017\\_Attestation\\_Report.pdf](http://www.auditors.nebraska.gov/APA_Reports/2018/SA12-08142018-July_1_2016_through_December_31_2017_Attestation_Report.pdf).

<sup>2</sup> The State Treasurer asks, rhetorically, in his request letter, whether child support payments handled by that office become state funds merely by being deposited in a state bank account. We believe it is clear that these types of monies never become "state funds." *See also*, Op. Att'y Gen. No. 0002, p. 1 (January 4, 2000) ("[child support funds] represent child support payments due individual litigants rather than public funds.")

<sup>3</sup> We have also looked for guidance in how other states' courts have defined "public funds" absent a statutory definition. In Virginia, "[p]ublic funds are those moneys belonging to the State or to any city, county or political subdivision of the State, — or more specifically, taxes, customs and moneys raised by the operation of law for the support of the government or for the discharge of its obligations. . . . The character of the money is determined by its ownership rather than by the manner and means of its collection." *Beckner v. Com.*, 174 Va. 454, 459, 5 S.E.2d 525, 527 (1939)(citations omitted). "Public funds are moneys belonging to the United States or a corporate agency of the Federal government, a state or subdivision thereof,

or a municipal corporation. They represent moneys raised by the operation of law for the support of the government or for the discharge of its obligations. In other words, they constitute 'revenue', which, in turn, is defined as 'the income of the government arising from taxation, duties, and the like.'" *Wood Bros. Const. Co. v. Bagley*, 232 Iowa 902, 908-09, 6 N.W.2d 397, 400 (1942)(internal quotations omitted)(citations omitted). These cases are consistent with the prior opinions of this office.

<sup>4</sup> The State Treasurer also cites to an informal opinion of this office issued in 2013 concerning the University of Nebraska Group Health Trust Fund. The question raised in that opinion was whether those funds, which were to be used to pay University employee health care obligations, funded by employee and employer health plan contributions, must be deposited with the State Treasurer. We determined that the University Trust Fund did not contain money of the state once that money was paid into the trust; the money belonged to the health plan for the sole purpose of paying employee health claims. However, that opinion is inapplicable to the questions at issue. First, there was no express statutory provision requiring the University to deposit the funds with the State Treasurer. In the present instance, the Nebraska Legislature has chosen a specific statutory scheme that requires the fees paid by NESPT participants to be deposited in the Expense Fund. Second, the primary analysis related to whether the University had a legal obligation to make the health plan payments and whether the employees who participated in the plan had a legal right to the payments. Our analysis depended on the Nebraska Wage Payment and Collection Act, which has no application to the questions herein.

<sup>5</sup> Found at <http://cdn.unite529.com/jcdn/files/NED/pdfs/programdescription.pdf>.

<sup>6</sup> Found at <http://cdn.unite529.com/jcdn/files/PDF/pdfs/tdameritrade/programDescription.pdf>

<sup>7</sup> Found at <https://cdn.unite529.com/jcdn/files/NEA/pdfs/programdescription.pdf>.

<sup>8</sup> Found at <http://cdn.unite529.com/jcdn/files/PDF/pdfs/sfadvisor/programdescription.pdf>.

<sup>9</sup> We understand the Expense Fund is utilized to pay for expenses of the Treasurer's Office related to the administration of NESPT. This is in keeping with the prohibition against using any General Fund monies to operate NESPT. *See* Neb. Rev. Stat. § 85-1807(1); *See also* Op. Att'y Gen. No. 93094 (November 10, 1993) ("It is a longstanding principle of constitutional law in Nebraska that public funds cannot be expended for private purposes." (citations omitted)). No Expense Fund monies are used for the general operation of the Treasurer's Office, or its other programs.

<sup>10</sup> This office generally declines to opine as to whether a current statute is unconstitutional, absent a pressing need to do so. Should the Legislature instruct the Treasurer to transfer funds from the Expense Fund to the

General Fund, the issue of whether such transfer would be constitutional would then be ripe for our opinion. *See* Neb. Rev. Stat. §§ 84-215, 84-216.

Opinion 18-009

SUBJECT: Interpretation of the Phrase "An Officer of a State Police Agency of Another State" in Neb. Rev. Stat. § 60-146 (Cum. Supp. 2016), *amended by* 2018 Neb. Laws LB 909, § 24.

REQUESTED BY: Senator Kate Bolz  
Nebraska Legislature

WRITTEN BY: Douglas J. Peterson, Attorney General  
Laura A. Nigro, Assistant Attorney General

**INTRODUCTION**

You have requested an opinion from this office asking whether the term "officer of a state police agency of another state" in Neb. Rev. Stat. § 60-146 (Cum. Supp. 2016), *amended by* 2018 Neb. Laws LB 909, § 24, refers to only active officers of a statewide law enforcement agency. Depending on our response, you are considering amendatory legislation. For the reasons set forth below, we conclude that "an officer of a state police agency of another state" means only law enforcement officers working within a state police agency of a state other than Nebraska.

**DISCUSSION**

Neb. Rev. Stat. § 60-146 addresses obtaining certificates of title for vehicles. Section § 60-146 requires that an application for a certificate of title include a statement of identification inspection, unless an exception applies. Neb. Rev. Stat. 60-146(3) specifically addresses who can conduct an identification inspection for in-state and out-of-state vehicles. Section 60-146(3) provides:

The statement that an identification inspection has been conducted shall be furnished by the county sheriff of any county or by any other holder of a certificate of training issued pursuant to section 60-183,<sup>1</sup> shall be in a format as determined by the department, and shall expire ninety days after the date of the inspection. The county treasurer shall accept a certificate of inspection, approved by the superintendent, from an officer of a state police agency of another state unless an inspection is required under section 60-174.<sup>2</sup>

As you point out in your letter, § 60-146 provides different inspection rules for in-state and out-of-state vehicles. In-state vehicles may be inspected by a county sheriff or a holder of a certificate of training issued by



the Nebraska State Patrol ["Patrol"] pursuant to § 60-183. Out-of-state vehicles can only be inspected by an officer of a state police agency of the state from which the vehicle originates.

"In construing a statute, a court must determine and give effect to the purpose and intent of the Legislature as ascertained from the entire language of the statute considered in its plain, ordinary, and popular sense." *Piska v. Nebraska Dep't of Social Services*, 252 Neb. 589, 594, 567 N.W.2d 544, 547 (1997). "[A]n appellate court must look to the statute's purpose and give to the statute a reasonable construction which best achieves that purpose, rather than a construction which would defeat it." *Henery v. City of Omaha*, 263 Neb. 700, 705, 641 N.W.2d 644, 648 (2002). "Statutory language is to be given its plain and ordinary meaning in the absence of anything indicating to the contrary." *PSB Credit Services, Inc. v. Rich*, 251 Neb. 474, 477, 558 N.W.2d 295, 297 (1997).

Applying these rules of statutory interpretation, the language of § 60-146 is plain and unambiguous. "State police" is defined as "[t]he department or agency of a state government empowered to maintain order, as by investigating crimes, and making arrests." Black's Law Dictionary (10<sup>th</sup> ed. 2014). Thus, the phrase "an officer of a state police agency of another state" plainly means a person serving as an officer of a state police agency in a state other than Nebraska.<sup>3</sup>

You ask us to consider whether "an officer of a state police agency of another state" could be interpreted more broadly to include non-state police officers or persons that are licensed to conduct inspections by a state police agency. You note that, under § 60-146, in-state vehicles can have an identification inspection conducted by a holder of a certificate of training issued pursuant to § 60-183. As stated previously however, § 60-146 lays out different processes for in-state and out-of-state vehicles.

"The legal principle of *expressio unius est exclusio alterius* (the expression of one thing is the exclusion of the others) recognizes the general principle of statutory construction that an expressed object of a statute's operation excludes the statute's operation on all other objects unmentioned by the statute." *Pfizer Inc. v. Lancaster Cty. Bd. of Equal.*, 260 Neb. 265, 272, 616 N.W.2d 326, 335 (2000). *See also A & D Technical Supply Co. v. Nebraska Dep't of Revenue*, 259 Neb. 24, 31, 607 N.W.2d 857, 863 (2000). "[W]here a statute or ordinance enumerates the things upon which it is to operate, or forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned, unless the legislative body has plainly indicated a contrary purpose or intention." *Nebraska City Ed. Ass'n v. School Dist. of Nebraska City, in Otoe Cty.*, 201 Neb. 303, 306, 267 N.W.2d 530, 532 (1978) (*citing Starman v. Shirley*, 162 Neb. 613, 76 N.W.2d 749 (1956)).

Neb. Rev. Stat. § 60-146 states that out-of-state vehicles must be inspected by "an officer of a state police agency of another state." Under

§ 60-146, the conduct of identification inspections by persons holding a certificate of training is limited to holders of certificates issued by the Patrol and applies only to the inspection of in-state vehicles. The Legislature clearly chose to have different processes apply to inspections of in-state and out-of-state vehicles. The Legislature could have made one process apply to all vehicles. It chose not to do so.

### CONCLUSION

Based on the above discussion, it is our opinion that under § 60-146, an "officer of a state police agency of another state" does not include any law enforcement officer other than one employed by a state police agency of a state other than Nebraska. Further, it also does not permit non-state police officers or persons licensed to conduct inspections by another state's police agency to conduct out-of-state identification inspections.

Sincerely,  
DOUGLAS J. PETERSON  
Attorney General  
(Signed) Laura A. Nigro  
Assistant Attorney General

pc Patrick J. O'Donnell  
Clerk of the Nebraska Legislature  
36-035-29

<sup>1</sup> "No person shall conduct an inspection unless he or she is the holder of a current certificate of training issued by the patrol. The certificate of training shall be issued upon completion of a course of instruction, approved by the patrol, in the identification of stolen and altered vehicles. The superintendent may require an individual to take such additional training as he or she deems necessary to maintain a current certificate of training." Neb. Rev. Stat. § 60-183 (2010).

<sup>2</sup> Neb. Rev. Stat. § 60-174 (Cum. Supp. 2018) applies to salvage titles.

<sup>3</sup> This is consistent with instructions published by the Department of Motor Vehicles ["DMV"] advising identification inspections for out-of-state vehicles are to be performed by "the State Police in the state where the vehicle is located..." See <https://dmv.nebraska.gov/dvr/title/vehicle-inspection>. The DMV's instructions refer to the Patrol's Vehicle Inspection Form (NSP455), which is to be completed "BY STATE LAW ENFORCEMENT OFFICER ONLY," with a certification that the inspector is "an officer of a STATE POLICE AGENCY employed by the STATE of \_\_\_\_\_." (accessible at [https://dmv.nebraska.gov/sites/dmv.nebraska.gov/files/doc/dvr/forms/455-Motor\\_Vehicle\\_Identification\\_Certificate.pdf](https://dmv.nebraska.gov/sites/dmv.nebraska.gov/files/doc/dvr/forms/455-Motor_Vehicle_Identification_Certificate.pdf)).

**2018 INTERIM REPORT  
ON THE DISPOSITION OF  
INTERIM STUDY RESOLUTIONS**

Agriculture

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
371	Interim study to compile information regarding the number and nature of fence dispute claims filed pursuant to 34-112.02 and the extent to which mediation services have been utilized			X <sup>1</sup>
416	Interim study to examine which advertising practices should be considered unlawful acts under the Weights and Measures Act			X

<sup>1</sup> A background report prepared by staff on the topic of the resolution is published on the Agriculture Committee's website.

Appropriations

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
361	Interim study to examine the extent of the parking shortage in the Capitol environs		X	
384	Interim study to examine the prevalence of cancer in Nebraska and to examine the existing state funding sources that go towards cancer research		X	
386	Interim study to examine the impact on state spending as a result of the use of tobacco products in Nebraska		X	
389	Interim study to examine criteria for economic development tools funded by the Legislature		X	
430	Interim study to examine the federal Family First Prevention Services Act of 2017 and its implementation in Nebraska		X	

442	Interim study to examine the underlying appropriation issues contributing to the financial hardship experienced by rural long-term care providers across the State of Nebraska		X	
444	Interim study to examine issues surrounding film and media production in Nebraska		X	
445	Interim study to examine the long-term fiscal sustainability of the Nebraska Health Care Cash Fund		X	
457	Interim study to examine state fiscal resources that exist to support first generation students		X	
461	Interim study to conduct a review of the Affordable Housing Trust Fund and make recommendations to support and increase affordable housing funding in Nebraska		X	

## Banking, Commerce and Insurance

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
352	Interim study to determine whether the Real Property Appraiser Act should be updated		X	
376	Interim study to examine whether the Property and Casualty Insurance Rate and Form Act should be amended to modernize and reduce regulatory requirements for commercial lines of property and casualty insurance		X	
378	Interim study to examine what changes to the Uniform Protected Series Act are necessary for the act to best fit within Nebraska entity law and practices		X	

Business and Labor

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
379	Interim study to examine the potential impact of changing provisions under the Industrial Relations Act for the determination of working conditions for noncertificated or noninstructional school employees by including criteria related to the property tax base of the employer		X	
383	Interim study to examine the feasibility of adopting a workers' compensation drug formulary		X	
431	Interim study to analyze and review reimbursement rates for ambulatory surgical centers and outpatient hospitals with respect to the provision of workers' compensation services and determine the effectiveness of current billing and reimbursement methods		X	

Education

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
362	Interim study to examine issues under the jurisdiction of the Education Committee			X
452	Interim study to examine alternative teacher certification programs		X	
403	Interim study to examine the enrollment option program			X
381	Interim study to examine the inclusion of financial literacy and entrepreneurship in the academic content standards adopted by the State Board of Education as proposed in LB 1094, 2018			X
456	Interim study to examine the Student Discipline Act			X

393	Interim study to examine delinquent or unpaid school meal accounts in Nebraska schools and school districts			X
434	Interim study to examine school structure and finance			X
372	Interim study to examine school violence and identify steps that can be taken to preserve our schools as safe environments for learning and growth			X
438	Interim study to examine the benefits of the creation of an educational trust fund			X
439	Interim study to examine the ongoing implementation and impact of LB 276, 2014, which made medicaid reimbursement available for a broader array of services delivered to medicaid-eligible special education students			X
446	Interim study to examine existing best practices for anti-bullying policies and practices in K-12 education and the feasibility of adopting these standards			X
428	Interim study to examine the potential of micro-credentialing in Nebraska			X
357	Interim study to examine the current status of early childhood education			X

## Executive Board

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
401	Interim study to identify the lawful occupations and the occupational regulations which are subject to the Occupational Board Reform Act and to prepare for implementation of the act			X
437	Interim study to analyze possible improvements and changes to the standing committee system of the Legislature			X

443	Interim study to examine the issues surrounding the adoption of a state strategic plan			X
458	Interim study to examine the feasibility of developing a process for the preparation and consideration of racial impact statements relating to possible legislation			X

General Affairs

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
339	Interim study to examine the issuance and usage of special designated licenses under the Nebraska Liquor Control Act pursuant to 53-124.11			X
375	Interim study to examine issues under the jurisdiction of the General Affairs Committee			X
382	Interim study to conduct a comprehensive review of state laws affecting farm wineries			X
449	Interim study to examine the jurisdiction of the State Racing Commission and the role of the commission in promoting the best interests of the horse racing industry			X

Government, Military and Veterans Affairs

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
353	Interim study to determine the feasibility and fiscal impact of hiring outside consultants to perform an efficiency review of state agencies		X	
374	Interim study to examine the regional boundaries of the Nebraska Planning and Development Regions		X	

391	Interim study to examine the effects on elections should Nebraska switch to an all vote-by-mail system		X	
407	Interim study to examine the self-funded model that has led to the development and management of technology to allow citizens electronic access to government information and services		X	
417	Interim study to examine whether inmates in county jails, who are eligible to vote, are being unconstitutionally disenfranchised due to their circumstances		X	
455	Interim study to identify evidence-based best practices for establishing an early warning system to identify and respond to fiscal distress among local political subdivisions		X	
469	Interim study to examine the processes by which state government contracts with small businesses		X	

## Health and Human Services

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
377	Interim study to review procedures and practices at the Youth Rehabilitation Center-Kearney and the Youth Rehabilitation and Treatment Center-Geneva with the intent to improve safety and security		X	
395	Interim study to examine issues to identify the needs of and improve upon the emergency medical services system provided by volunteers in Nebraska		X	



405	Interim study to examine the conditions which lead to the congregation, isolation, and segregation of Nebraskans with mental illness who reside in institutional settings and those at risk of placement in institutional settings due to a lack of community support and services			X
413	Interim study to examine strategies to strengthen Nebraska's workforce and build financial mobility and independence, particularly among working parents with young children		Ongoing	
414	Interim study to examine the overall impact of the area agencies on aging and their interaction with the Aging and Disability Resource Center		X	
419	Interim study to examine the term "shaken baby syndrome" as it exists within Nebraska statutes		X	
420	Interim study to examine possible collaboration between the Dept. of Health and Human Services and the Dept. of Education to address behavioral or mental health issues for Nebraska students		Ongoing	
422	Interim study to examine the issuance and usage of electronic prescriptions in accordance with regulatory standards		X	
436	Interim study to evaluate the effectiveness of occupational licensing processes in accommodating military spouses and transitioning service members		X	
440	Interim study to examine issues relating to the Nebraska Coalition for Patient Safety			X

448	Interim study to conduct a comprehensive review of Nebraska's Medicaid Insurance for Workers with Disabilities eligibility under the Medical Assistance Act		X	
451	Interim study to examine the work of the Nebraska Children's Commission and to evaluate the need for the commission's continuation and any revisions to its structure and purpose		X	
460	Interim study to create legislation to assure no person will be discriminated against on the basis of a disability when he or she is being considered as an adoptive parent in an adoption or obtaining guardianship or foster parenting status or placement			X
482	Interim study to examine existing barriers that prohibit the establishment of mobile massage establishments		X	

## Judiciary

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
370	Interim study to conduct a review of issues arising from the lack of mental health treatment for those in the criminal justice system		Hearing held 9/7/2018	
390	Interim study to examine the success of the Office of Violence Prevention since its establishment		Hearing held 9/7/2018	
402	Interim study to examine the issue of granting local school boards the authority to allow school employees to carry concealed handguns on school grounds		Hearing held 9/28/2018	
406	Interim study to examine the feasibility of adopting the American Bar Association's Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases		Hearing held 9/7/2018	

415	Interim study to examine the effectiveness of statute 29-901, as relates to the imposition of bail and the requiring of money bonds for misdemeanors and city ordinance violations		Hearing held 9/7/2018	
418	Interim study to examine the disproportionality that exists in Nebraska's foster care and juvenile justice systems		Hearing held 9/28/2018	
423	Interim study to examine the application of adverse possession in the State of Nebraska and to consider recommendations for modernizing the doctrine to meet contemporary requirements			X
429	Interim study to examine the role and purpose of school resource officers		Hearing held 9/28/2018	
432	Interim study to examine issues faced by renters in Nebraska including rental deposits and fees, recourse for renters when rights are violated, and other issues			X
435	Interim study to review how the Nebraska State Patrol conducts internal affairs investigations into potential civil and criminal violations of its members			X
447	Interim study to examine security measures to ensure safety in schools		Hearing held 9/28/2018	
459	Interim study to create legislation to assure that no person will be discriminated against on the basis of a disability in situations arising under the juvenile code in which he or she faces termination or limitation of his or her parental rights			X
467	Interim study to examine the Nebraska Juvenile Code			X
468	Interim study to review criminal offenses throughout the Nebraska statutes			X

## Natural Resources

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
387	Interim study to examine issues relating to the spread of Eastern Redcedar trees	X		
464	Interim study to review public power		X	
466	Interim study to review issues pertaining to water quality			X
394	Interim study to examine policies and practices designed to assist low-income Nebraskans at risk of utility shutoffs due to overdue payments			X
450	Interim study to examine methods of increasing solar energy development in Nebraska			X
463	Interim study to examine statutes related to augmentation projects in relationship to the Nebraska Cooperative Republican Platte Enhancement interlocal project in Lincoln County			X

## Nebraska Retirement Systems

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
368	Interim study to examine the public employees' retirement systems administered by the Public Employees Retirement Board		X	
369	Interim study to carry out the provisions of 13-2402 which require the Nebraska Retirement Systems Committee to monitor underfunded defined benefit plans administered by political subdivisions	X		
373	Interim study to examine the potential for public safety officers to retain a portion of pension funds for health care under section 402(1) of the Internal Revenue Code		X	

396	Interim study to examine possible changes to the School Employees Retirement Act and the Class V School Employees Retirement Act		X	
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Revenue

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
388	Interim study to examine issues related to updating the Nebraska Advantage Act		X	
462	Interim study to examine the possible elimination of various exemptions of goods and exclusions of services under Nebraska's sales and use tax laws		X	
454	Interim study to examine taxes and fees on wireless services		X	
408	Interim study to examine resources available to the state and political subdivisions to fund roads		X	
465	Interim study to review issues pertaining to funding Nebraska's infrastructure system		X	

Transportation and Telecommunications

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
426	Interim study to examine issues raised by LB 1031, 2018, which considered whether the One-Call Notification System Act should be updated		X	
424	Interim study to examine a comprehensive list of issues related to the operation of autonomous vehicles in Nebraska		X	
441	Interim study to examine telecommunications services in Nebraska		X	
425	Interim study to examine issues under the jurisdiction of the Transportation and Telecommunications Committee			X

427	Interim study to investigate transferring the recreational vehicles franchise statutes into a distinct and separate section of law			X
453	Interim study to examine net neutrality			X

## Urban Affairs

LR	Subject	Completed Report Issued	Completed No Report Issued	Deferred
319	Interim study to determine a sustainable revenue source for the Nebraska Main Street Network		X	
392	Interim study to examine neighborhood issues and potential neighborhood improvement tools		X	
397	Interim study to examine the statutory authority for municipalities to establish port authorities		X	
398	Interim study to examine the impact on sanitary and improvement districts upon annexations by municipalities		X	
399	Interim study to examine issues related to metropolitan transit authorities		X	
400	Interim study to examine issues related to the Nebraska Municipal Land Bank Act		X	
404	Interim study to examine the potential impact of Opportunity Zones under the federal Tax Cuts and Jobs Act on municipalities in Nebraska			X
409	Interim study to examine issues related to the disconnection of territory from the corporate limits of cities of the first class, cities of the second class, and villages		X	
410	Interim study to examine issues related to the municipal regulation of railroads		X	
411	Interim study to examine issues under the jurisdiction of the Urban Affairs Committee			X

412	Interim study to examine the statutes governing cities of the primary class			X
421	Interim study to examine the operating expenses and fees charged for inspections, plans reviews, and other services by the Housing and Recreational Vehicle Dept. of the Public Service Commission			X
433	Interim study to evaluate the availability of affordable housing in Nebraska municipalities with an emphasis on rental housing		X	

**NOTICE OF COMMITTEE HEARING(S)**

Rules

Room 1525

Wednesday, January 16, 2019 1:30 p.m.

Proposed Rules Changes

Note: Rule change proposals are available from Senator Crawford

(Signed) Sue Crawford, Chairperson

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 1.** Introduced by Executive Board: Hilgers, 21, Chairperson.

A BILL FOR AN ACT relating to the Water Funding Task Force; to repeal provisions relating to the task force that terminated on December 31, 2013; and to outright repeal sections 50-504, 50-505, 50-506, 50-507, and 50-508, Revised Statutes Cumulative Supplement, 2018.

**LEGISLATIVE BILL 2.** Introduced by Executive Board: Hilgers, 21, Chairperson.

A BILL FOR AN ACT relating to the McGruff House program; to repeal provisions that are obsolete relating to a program that ended in 2012; and to outright repeal section 43-3201, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 3.** Introduced by Executive Board: Hilgers, 21, Chairperson.

A BILL FOR AN ACT relating to appropriations; to amend section 85-1418, Reissue Revised Statutes of Nebraska, and sections 13-518 and 85-1503, Revised Statutes Cumulative Supplement, 2018; to repeal provisions that are obsolete; to harmonize provisions; to repeal the original sections; and to outright repeal sections 90-517, 90-535, 90-536, 90-537, 90-538, 90-539, and 90-541, Reissue Revised Statutes of Nebraska, and sections 90-542, 90-543, 90-544, 90-545, 90-546, 90-547, 90-548, 90-549, 90-550, 90-551, 90-552, 90-553, 90-554, 90-555, 90-556, 90-557, 90-559, and 90-560, Revised Statutes Cumulative Supplement, 2018.

**LEGISLATIVE BILL 4.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to the Tax Equalization and Review Commission Act; to amend sections 77-5004 and 77-5013, Reissue Revised Statutes of Nebraska; to provide for mileage reimbursement as prescribed; to change filing fees as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 5.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to the Beginning Farmer Tax Credit Act; to amend sections 77-5203, 77-5213, and 77-5215, Reissue Revised Statutes of Nebraska; to define a term; to change provisions relating to tax credit amounts; to provide for applicability; and to repeal the original sections.

**LEGISLATIVE BILL 6.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to postsecondary education; to amend section 85-502, Revised Statutes Cumulative Supplement, 2018; to change residency requirements for persons on active duty and their dependents; and to repeal the original section.

**LEGISLATIVE BILL 7.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-101, Revised Statutes Cumulative Supplement, 2018; to adopt the Counterfeit Airbag Prevention Act; to provide penalties and eliminate a penalty; to harmonize provisions; to repeal the original section; and to outright repeal section 28-635, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 8.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend section 60-6,233, Reissue Revised Statutes of Nebraska; to allow physician medical directors to display certain vehicle lights as prescribed; to define a term; and to repeal the original section.

**LEGISLATIVE BILL 9.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to political subdivisions; to prohibit cities,



villages, and counties from taxing or otherwise regulating the use of distributed ledger technology; to define a term; and to provide duties for the Revisor of Statutes.

**LEGISLATIVE BILL 10.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to motor vehicles; to amend section 60-6,230, Revised Statutes Cumulative Supplement, 2018; to authorize the operation of lighted-billboard motor vehicles; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 11.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to cities and villages; to amend section 18-1720, Reissue Revised Statutes of Nebraska; to provide for an interlocal agreement with a county to abate, remove, or prevent nuisances as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 12.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to the Nebraska Real Estate License Act; to amend section 81-885.14, Reissue Revised Statutes of Nebraska, and section 81-885.17, Revised Statutes Cumulative Supplement, 2018; to provide a license fee exemption for servicemembers and their spouses as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 13.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to breast-feeding; to amend sections 28-806, 77-2701, 77-2701.04, 77-2701.41, 77-2711, 77-2713, and 77-27,223, Reissue Revised Statutes of Nebraska; to exempt breast-feeding from public indecency offenses; to provide a sales and use tax exemption for breast pumps and related supplies as prescribed; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 14.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to agriculture; to provide for truth in advertising and labeling in the sale of meat and food plans; to define terms; to prohibit misleading or deceptive practices; to provide a penalty; and to provide an operative date.

**LEGISLATIVE BILL 15.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to insurance; to adopt the Children of Nebraska Hearing Aid Act.

**LEGISLATIVE BILL 16.** Introduced by Briese, 41; Brewer, 43.

A BILL FOR AN ACT relating to public records; to amend section 84-712.05, Revised Statutes Cumulative Supplement, 2018; to provide for withholding certain public records; and to repeal the original section.

**LEGISLATIVE BILL 17.** Introduced by Briese, 41.

A BILL FOR AN ACT relating to juveniles; to amend section 43-246, Reissue Revised Statutes of Nebraska; to state a right relating to a disabled parent; and to repeal the original section.

**LEGISLATIVE BILL 18.** Introduced by Briese, 41; Murman, 38.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-27,132, Reissue Revised Statutes of Nebraska; to adopt the Remote Seller Sales Tax Collection Act; to direct certain sales tax revenue to the Property Tax Credit Cash Fund; to provide an operative date; and to repeal the original section.

**LEGISLATIVE BILL 19.** Introduced by Briese, 41.

A BILL FOR AN ACT relating to public records; to amend section 84-712.05, Revised Statutes Cumulative Supplement, 2018; to provide for confidentiality of certain reports of injury under the Nebraska Workers' Compensation Act; to provide duties for the Nebraska Workers' Compensation Court; and to repeal the original section.

**LEGISLATIVE BILL 20.** Introduced by Briese, 41.

A BILL FOR AN ACT relating to political subdivisions; to amend sections 13-1304 and 13-1306, Reissue Revised Statutes of Nebraska; to require approval by the voters for the issuance of bonds by public building commissions; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 21.** Introduced by Kolterman, 24; Wayne, 13.

A BILL FOR AN ACT relating to state government; to amend section 73-504, Reissue Revised Statutes of Nebraska; to provide formal protest procedures for certain contracts for services; to provide duties for the Department of Administrative Services; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 22.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to nursing facilities; to amend sections 71-2097, 71-2098, and 71-20,100, Reissue Revised Statutes of Nebraska; to redefine a term; to change provisions relating to distribution of the Nursing Facility Penalty Cash Fund; to harmonize provisions; and to repeal the

original sections.

**LEGISLATIVE BILL 23.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to the Property Assessed Clean Energy Act; to amend sections 13-3202, 13-3203, 13-3204, and 13-3205, Revised Statutes Cumulative Supplement, 2018; to change legislative findings; to redefine terms; to change provisions relating to requirements for ordinances or resolutions, assessment contracts, and duties of municipalities; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 24.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to the Department of Health and Human Services.

**LEGISLATIVE BILL 25.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to health and human services; to amend sections 38-151 and 71-8701, Reissue Revised Statutes of Nebraska; to provide additional fees for certain credentials; to provide for a termination date; to create a fund; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 26.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to legal service insurance corporations; to amend sections 44-3302 and 44-3303, Reissue Revised Statutes of Nebraska; to redefine a term; to exclude certain plans from the insurance laws as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 27.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to community colleges; to amend sections 77-3442, 85-1402, 85-1517, 85-1520, 85-1521, and 85-1535, Reissue Revised Statutes of Nebraska; to change provisions relating to tax levies as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 28.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to real property; to authorize damages for property taxes and special assessments paid on property lost through adverse possession.

**LEGISLATIVE BILL 29.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend sections 38-101 and 38-2001, Revised Statutes Cumulative Supplement, 2018; to provide for telehealth practice; to eliminate provisions relating to telehealth practice; to harmonize provisions; to repeal the original sections; and to outright repeal section 38-2063, Revised Statutes Cumulative Supplement, 2018.

**LEGISLATIVE BILL 30.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to the Professional Landscape Architects Act; to amend sections 81-8,183.01, 81-8,184, 81-8,186, 81-8,191, 81-8,191.01, 81-8,192, 81-8,194, 81-8,196, 81-8,198, 81-8,199, 81-8,200, 81-8,202, 81-8,204, 81-8,205, and 81-8,206, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to licensure and regulation of professional landscape architects; to provide and change penalties; to harmonize provisions; to repeal the original sections; and to outright repeal sections 81-8,184.01, 81-8,185, 81-8,187, 81-8,188, 81-8,195, 81-8,197, 81-8,200.01, 81-8,200.02, 81-8,201, and 81-8,203, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 31.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to retirement; to amend sections 79-978.01 and 84-1503, Revised Statutes Cumulative Supplement, 2018; to provide for a work plan relating to a transfer of management of the retirement system operated under the Class V School Employees Retirement Act to the Nebraska Public Employees Retirement Systems; to require a report; to provide duties for the Public Employees Retirement Board; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 32.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to retirement; to amend sections 23-2309.01, 23-2310.05, 84-1310.01, and 84-1311.03, Revised Statutes Cumulative Supplement, 2018; to change defined contribution benefit investment options as prescribed under the County Employees Retirement Act and State Employees Retirement Act; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 33.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to retirement; to amend sections 72-1243, 72-1277, 72-1278, 73-507, and 84-1502, Reissue Revised Statutes of Nebraska, and sections 79-989, 84-712.05, and 84-1503, Revised Statutes Cumulative Supplement, 2018; to change written plan of action deadlines for the Nebraska Investment Council and the Public Employees Retirement Board; to change findings and comprehensive review provisions relating to

the achieving a better life experience program; to provide an exception for contracts for certain auditing services; to provide a public records exception as prescribed under the Class V School Employees Retirement Act; to increase the board member per diem and change duties relating to competitive bidding of the Public Employees Retirement Board; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 34.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to retirement; to amend sections 23-2320, 84-1321.01, and 84-1322, Reissue Revised Statutes of Nebraska, and sections 23-2308.01, 23-2319.01, and 84-1309.02, Revised Statutes Cumulative Supplement, 2018; to eliminate provisions relating to benefits payable after the filing of a grievance or appeal and change provisions relating to employee reinstatement under the County Employees Retirement Act and State Employees Retirement Act; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 35.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to retirement; to amend sections 23-2320 and 84-1322, Reissue Revised Statutes of Nebraska, and sections 23-2306 and 84-1307, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to reemployment, reinstatement, repayment, and age eligibility regarding certain retirement system members under the County Employees Retirement Act and State Employees Retirement Act; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 36.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to the School Employees Retirement Act; to amend section 79-927, Reissue Revised Statutes of Nebraska, and sections 79-902 and 79-921, Revised Statutes Cumulative Supplement, 2018; to redefine creditable service for certain member employees; to change a deadline for payment for restoration of relinquished creditable service; to change provisions relating to required forms of payment and service credit computation; and to repeal the original sections.

**LEGISLATIVE BILL 37.** Introduced by Hilkemann, 4.

A BILL FOR AN ACT relating to the Podiatry Practice Act; to amend sections 38-2047 and 38-3001, Reissue Revised Statutes of Nebraska; to provide for a physician assistant to assist a podiatrist as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 38.** Introduced by Hilkemann, 4.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 18-1737, 60-380, 60-392, 60-399, 60-3,102, 60-3,105, 60-3,106, 60-3,107,

60-3,108, 60-3,130, 60-3,130.01, 60-3,130.02, 60-3,130.05, 60-3,130.06, 60-3,134, 60-3,135, 60-3,145, 60-3,146, 60-3,149, 60-3,150, 60-3,167, 60-3,175, 60-3,183, 60-3,222, 60-653, 60-683, 60-1306, 60-1902, 60-1903, 60-1908, 66-1406.02, and 81-2005, Reissue Revised Statutes of Nebraska, and sections 18-1736, 60-163, 60-180, 60-308, 60-366, 60-373, 60-376, 60-378, 60-395, 60-396, 60-397, 60-398, 60-3,100, 60-3,101, 60-3,104.01, 60-3,109, 60-3,113, 60-3,114, 60-3,119, 60-3,120, 60-3,121, 60-3,122, 60-3,122.02, 60-3,122.04, 60-3,123, 60-3,124, 60-3,125, 60-3,126, 60-3,128, 60-3,147, 60-3,151, 60-3,157, 60-3,205, 60-3,224, 60-3,227, 60-3,228, 60-3,231, 60-3,233, 60-3,235, 60-501, 60-6,197.01, and 60-1901, Revised Statutes Cumulative Supplement, 2018; to provide for one license plate and In Transit decal per vehicle; to change provisions relating to license plates; to eliminate obsolete provisions; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 39.** Introduced by Hilkemann, 4.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-6,268 and 60-6,270, Revised Statutes Cumulative Supplement, 2018; to change passenger restraint system enforcement from a secondary offense to a primary offense; to require the use of occupant protection systems for each vehicle occupant; to repeal the original sections; and to outright repeal section 60-6,271, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 40.** Introduced by Hilkemann, 4.

A BILL FOR AN ACT relating to motor vehicles; to amend sections 60-4,120.01, 60-4,123, 60-4,124, and 60-6,179.01, Revised Statutes Cumulative Supplement, 2018; to change certain uses of interactive wireless communication devices from secondary offenses to primary offenses as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 41.** Introduced by Hilkemann, 4.

A BILL FOR AN ACT relating to bingo and other gambling; to amend section 9-1,101, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to the Charitable Gaming Division and the Nebraska Commission on Problem Gambling, use of the Charitable Gaming Operations Fund, and transfers to the Compulsive Gamblers Assistance Fund and General Fund as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 42.** Introduced by Hilkemann, 4.

A BILL FOR AN ACT relating to condominium law; to amend sections 76-808, 76-816, and 76-861, Reissue Revised Statutes of Nebraska; to provide responsibility for maintenance, repair, and replacement and provide a duty as prescribed for the board of administrators or other administrative body under the Condominium Property Act; to provide a duty for the executive board under the Nebraska Condominium Act; to provide for filing

fees; and to repeal the original sections.

**LEGISLATIVE BILL 43.** Introduced by Bolz, 29.

A BILL FOR AN ACT relating to victims' rights; to adopt the Sexual Assault Survivors' Bill of Rights Act.

**LEGISLATIVE BILL 44.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to crimes and offenses; to amend sections 28-115, 28-204, 29-742, 29-744, and 29-2204.02, Reissue Revised Statutes of Nebraska, and sections 23-3406, 23-3408, 24-1106, 25-1140.09, 28-104, 28-105, 28-201, 28-202, 28-303, 28-1356, 29-1602, 29-1603, 29-1816, 29-1822, 29-2004, 29-2005, 29-2006, 29-2020, 29-2027, 29-2204, 29-2261, 29-2407, 29-2801, 29-3205, 29-3920, 29-3922, 29-3928, 29-3929, 29-3930, 55-480, 83-1,110.02, 83-1,122.01, and 83-4,143, Revised Statutes Cumulative Supplement, 2018; to eliminate the death penalty; to change and eliminate provisions relating to the death penalty and murder in the first degree and related powers, duties, and procedures of courts, the Commission on Public Advocacy, the Department of Correctional Services, the Director of Correctional Services, the Board of Pardons, and the Governor; to eliminate a homicide-case report; to eliminate obsolete provisions; to harmonize provisions; to repeal the original sections; and to outright repeal sections 24-1105, 28-105.01, 29-2519, 29-2520, 29-2521, 29-2521.01, 29-2521.02, 29-2521.03, 29-2521.04, 29-2521.05, 29-2522, 29-2523, 29-2524, 29-2524.01, 29-2524.02, 29-2525, 29-2527, 29-2528, 29-2537, 29-2538, 29-2539, 29-2540, 29-2541, 29-2542, 29-2543, 29-2546, 29-2811, 83-1,132, 83-964, 83-965, 83-966, 83-967, 83-968, 83-969, 83-970, 83-971, and 83-972, Revised Statutes Cumulative Supplement, 2018.

**LEGISLATIVE BILL 45.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to prairie dogs; to repeal the Black-Tailed Prairie Dog Management Act; and to outright repeal sections 23-3801, 23-3802, 23-3803, 23-3804, 23-3805, 23-3806, 23-3807, 23-3808, 23-3809, and 23-3810, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 46.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to the Game Law; to amend section 37-452, Reissue Revised Statutes of Nebraska; to eliminate provisions relating to the hunting of mountain lions; to repeal the original section; and to outright repeal section 37-473, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 47.** Introduced by Chambers, 11.

A BILL FOR AN ACT relating to criminal procedure; to amend section 29-1420, Reissue Revised Statutes of Nebraska; to change provisions relating to when a grand jury report may be made public; and to repeal the

original section.

**LEGISLATIVE BILL 48.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to water; to amend section 46-229.04, Reissue Revised Statutes of Nebraska; to change provisions relating to a finding of sufficient cause for nonuse of a water appropriation; and to repeal the original section.

**LEGISLATIVE BILL 49.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to the Public Accountancy Act; to amend section 1-162.01, Reissue Revised Statutes of Nebraska; to change provisions relating to firm ownership; and to repeal the original section.

**LEGISLATIVE BILL 50.** Introduced by Vargas, 7.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 77-2715.03 and 77-2716, Reissue Revised Statutes of Nebraska; to change individual income tax brackets and rates; to impose an additional tax on certain income; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 51.** Introduced by Vargas, 7; Lindstrom, 18.

A BILL FOR AN ACT relating to the Motor Vehicle Industry Regulation Act; to amend section 60-1411.03, Reissue Revised Statutes of Nebraska, and sections 60-1407 and 60-1438.01, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to license applications, prohibited acts, and franchise restrictions; and to repeal the original sections.

**LEGISLATIVE BILL 52.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to state government; to define terms; to require public funds to be recorded in the state accounting system and invested by the state investment officer as prescribed; and to provide for enforcement.

**LEGISLATIVE BILL 53.** Introduced by Scheer, 19.

A BILL FOR AN ACT relating to water drainage; to amend sections 31-224 and 31-226, Reissue Revised Statutes of Nebraska; to change and provide duties for landowners or their tenants relating to removal of a blockage or an obstruction in a watercourse, slough, or drainage ditch or drainage course; to change provisions relating to failure to clear after notice; to provide for court costs and attorney's fees; and to repeal the original sections.

**LEGISLATIVE BILL 54.** Introduced by Lowe, 37.

A BILL FOR AN ACT relating to firearms; to amend section 28-1202,



Reissue Revised Statutes of Nebraska; to change provisions relating to carrying a concealed weapon; to define a term; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 55.** Introduced by Lowe, 37.

A BILL FOR AN ACT relating to minors; to amend section 43-2101, Revised Statutes Cumulative Supplement, 2018; to authorize persons eighteen years of age to acquire or convey title to real property; and to repeal the original section.

**LEGISLATIVE BILL 56.** Introduced by Lowe, 37.

A BILL FOR AN ACT relating to the Nebraska Liquor Control Act; to amend section 53-124.13, Reissue Revised Statutes of Nebraska, and section 53-124.11, Revised Statutes Cumulative Supplement, 2018; to change requirements for application for and issuance of a special designated license; and to repeal the original sections.

**LEGISLATIVE BILL 57.** Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to rental property; to amend sections 77-2701 and 77-2701.04, Reissue Revised Statutes of Nebraska; to define terms; to prohibit ordinances and other regulations prohibiting short-term rentals of residential property as prescribed; to provide for agreements with online hosting platforms regarding taxation; to harmonize provisions; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

**LEGISLATIVE BILL 58.** Introduced by Morfeld, 46.

A BILL FOR AN ACT relating to relating to firearms; to amend sections 69-2406, 69-2407, and 69-2439, Reissue Revised Statutes of Nebraska, and section 25-2740, Revised Statutes Cumulative Supplement, 2018; to adopt the Extreme Risk Protection Order Act; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 59.** Introduced by Cavanaugh, 6; Howard, 9.

A BILL FOR AN ACT relating to the Children's Residential Facilities and Placing Licensure Act; to amend section 71-1936, Reissue Revised Statutes of Nebraska; to change provisions relating to investigations; to require reports; and to repeal the original section.

**LEGISLATIVE BILL 60.** Introduced by Cavanaugh, 6; Howard, 9.

A BILL FOR AN ACT relating to infants; to amend sections 71-2102, 71-2103, 71-2104, and 79-1902, Reissue Revised Statutes of Nebraska, and section 43-2606, Revised Statutes Cumulative Supplement, 2018; to change

provisions relating to training requirements and shaken baby syndrome; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 61.** Introduced by Halloran, 33.

A BILL FOR AN ACT relating to rabies; to amend sections 71-4401, 71-4402, 71-4402.03, 71-4406, and 71-4407, Reissue Revised Statutes of Nebraska; to redefine terms; to change and eliminate provisions relating to vaccination and rules and regulations; to change provisions relating to seizure, confinement, testing, and disposition of a domestic animal and postexposure management of domestic animals and livestock; to harmonize provisions; to repeal the original sections; and to outright repeal section 71-4402.01, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 62.** Introduced by Howard, 9.

A BILL FOR AN ACT relating to public health and welfare; to amend section 71-503.02, Reissue Revised Statutes of Nebraska; to provide for distribution of information regarding and treatment of trichomoniasis; and to repeal the original section.

**LEGISLATIVE BILL 63.** Introduced by Groene, 42.

A BILL FOR AN ACT relating to rural and suburban fire protection districts; to amend sections 35-506, 35-509, 35-1204, 35-1206, and 77-3442, Reissue Revised Statutes of Nebraska; to change provisions relating to payments to board members and tax levies; to change the Mutual Finance Assistance Act as prescribed; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 64.** Introduced by Groene, 42.

A BILL FOR AN ACT relating to the Licensing of Truth and Deception Examiners Act; to amend sections 81-1901, 81-1902, 81-1903, 81-1904, 81-1905, 81-1906, 81-1907, 81-1908, 81-1909, 81-1910, 81-1911, 81-1912, 81-1913, 81-1914, 81-1915, 81-1916, 81-1920, 81-1921, 81-1923, 81-1924, 81-1925, 81-1926, 81-1928, 81-1930, 81-1932, 81-1934, 81-1935, and 81-1936, Reissue Revised Statutes of Nebraska; to change and eliminate provisions relating to licensing, training, and internships; to harmonize provisions; to repeal the original sections; and to outright repeal sections 81-1917, 81-1918, 81-1919, and 81-1922, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 65.** Introduced by Groene, 42.

A BILL FOR AN ACT relating to the State Electrical Act; to amend sections 81-2101, 81-2106, and 81-2108, Reissue Revised Statutes of Nebraska; to authorize a licensing exception; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 66.** Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to cities; to amend sections 14-403.01, 15-1102, and 19-903, Reissue Revised Statutes of Nebraska; to change provisions relating to comprehensive plans for cities to provide for an early childhood element as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 67.** Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to municipalities; to amend sections 8-205, 13-1302, 19-3052, 23-206, 23-339, and 31-505, Reissue Revised Statutes of Nebraska, and section 13-2705, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to how population thresholds are determined as prescribed; to redefine a term; to change references to cities, villages, and governing bodies; and to repeal the original sections.

**LEGISLATIVE BILL 68.** Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to cities; to amend sections 19-4019, 19-4022, 19-4032, 19-4035, and 19-4036, Reissue Revised Statutes of Nebraska, and sections 19-4017, 19-4017.01, 19-4018, 19-4021, 19-4026, 19-4027, 19-4028, 19-4029, 19-4029.01, 19-4029.02, 19-4029.03, 19-4029.04, 19-4029.05, 19-4030, 19-4031, 19-4033, 19-4034, and 19-4037, Revised Statutes Cumulative Supplement, 2018; to change provisions of the Business Improvement District Act as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 69.** Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2715.07, Reissue Revised Statutes of Nebraska; to provide income tax credits for caregivers as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 70.** Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to certain financial transactions; to amend sections 66-1509, 77-5211, and 81-15,119, Reissue Revised Statutes of Nebraska; to adopt the Uniform Voidable Transactions Act; to eliminate the Uniform Fraudulent Transfer Act; to harmonize provisions; to repeal the original sections; and to outright repeal sections 36-701, 36-702, 36-703, 36-704, 36-705, 36-706, 36-707, 36-708, 36-709, 36-710, 36-711, and 36-712, Reissue Revised Statutes of Nebraska.

**LEGISLATIVE BILL 71.** Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to shoplifting; to amend section 25-2803, Reissue Revised Statutes of Nebraska; to eliminate a civil cause of action for damages from shoplifting; to harmonize provisions; to repeal the original section; and to outright repeal section 25-21,194, Reissue Revised Statutes

of Nebraska.

**LEGISLATIVE BILL 72.** Introduced by Hansen, M., 26.

A BILL FOR AN ACT relating to county officers; to amend sections 32-517, 32-518, 32-519, 32-520, 32-521, 32-522, 32-523, 32-524, 32-525, 32-526, 32-528, 32-529, and 32-609, Reissue Revised Statutes of Nebraska; to provide for nomination and election of county officers on the nonpartisan ballot; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 73.** Introduced by Erdman, 47.

A BILL FOR AN ACT relating to schools; to require display of the national motto; to authorize contributions; and to provide duties for the Attorney General.

**LEGISLATIVE BILL 74.** Introduced by Williams, 36; Kolterman, 24.

A BILL FOR AN ACT relating to the Pharmacy Practice Act; to amend section 38-2845, Reissue Revised Statutes of Nebraska, and sections 38-2801 and 38-2802, Revised Statutes Cumulative Supplement, 2018; to define and redefine terms; to provide for validation of acts, tasks, and functions by certified pharmacy technicians as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 75.** Introduced by Williams, 36.

A BILL FOR AN ACT relating to the Nebraska Grape and Winery Board; to amend section 53-302, Reissue Revised Statutes of Nebraska; to change provisions relating to terms of office; and to repeal the original section.

**LEGISLATIVE BILL 76.** Introduced by Williams, 36.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-6202, Reissue Revised Statutes of Nebraska; to change provisions relating to the nameplate capacity tax; to provide an operative date; and to repeal the original section.

**LEGISLATIVE BILL 77.** Introduced by Williams, 36.

A BILL FOR AN ACT relating to real property; to amend sections 76-2207.27, 76-2207.30, 76-2222, 76-2228.01, 76-2228.02, 76-2230, 76-2231.01, 76-2232, 76-2236, 76-2238, and 76-3202, Reissue Revised Statutes of Nebraska; to change provisions of the Real Property Appraiser Act and alphabetize and redefine terms in the Nebraska Appraisal Management Company Registration Act; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 78.** Introduced by Williams, 36.

A BILL FOR AN ACT relating to limited liability companies; to amend section 21-147, Reissue Revised Statutes of Nebraska, sections 21-192, 21-507, 21-509, 21-510, 21-513, 21-514, 21-517, 21-520, 21-521, 21-522, 21-523, 21-525, 21-526, 21-528, 21-529, 21-532, 21-534, 21-537, and 21-539, Revised Statutes Cumulative Supplement, 2018; to provide changes and corrections to the Nebraska Uniform Protected Series Act; to change filing fees and dissolution provisions under the Nebraska Uniform Limited Liability Company Act; to harmonize provisions; to provide an operative date; to repeal the original sections; and to outright repeal section 21-541, Revised Statutes Cumulative Supplement, 2018.

**LEGISLATIVE BILL 79.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to transportation; to amend sections 60-107, 60-2705, 75-363, 75-364, 75-366, 75-392, and 75-393, Reissue Revised Statutes of Nebraska, and sections 60-119.01, 60-302.01, 60-336.01, 60-363, 60-386, 60-3,113.04, 60-3,193.01, 60-3,198, 60-3,202, 60-462.01, 60-479.01, 60-4,111.01, 60-4,132, 60-4,134, 60-4,147.02, 60-501, 60-628.01, 60-6,265, and 60-2909.01, Revised Statutes Cumulative Supplement, 2018; to allow for electronic images of registration certificates; to change provisions relating to the distribution of certain registration fees; to adopt and update references to certain federal provisions relating to cabin trailers, low-speed vehicles, handicapped or disabled parking, motor vehicle and trailer registration, the International Registration Plan, operators' licenses and state identification cards, persons handling source documents, commercial motor vehicles, hazardous materials, occupant protection systems and three-point safety belt systems, motor vehicle consumer informal dispute settlement procedures, disclosure of motor vehicle records, motor carrier and hazardous material regulations and their enforcement, and the unified carrier registration plan and agreement; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 80.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to motor vehicles; to amend section 60-146, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to identification inspections; and to repeal the original section.

**LEGISLATIVE BILL 81.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to the Nebraska Rules of the Road; to amend sections 60-6,170, 60-6,172, 60-6,173, and 60-6,174, Reissue Revised Statutes of Nebraska, and sections 60-601 and 60-605, Revised Statutes Cumulative Supplement, 2018; to define a term; to change provisions relating to special stops at railroad grade crossings; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 82.** Introduced by Friesen, 34.

A BILL FOR AN ACT relating to highways and bridges; to amend sections 39-2109, 39-2114, 39-2119, 39-2122, 39-2502, 39-2510, 39-2512, and 39-2520, Reissue Revised Statutes of Nebraska, and sections 39-810, 39-847, 39-1320, 39-2113, 39-2115, 39-2118, 39-2120, and 39-2121, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to contracts and state aid for bridges, land acquisition for state highways, functional classification, minimum standards, six-year and one-year plans, and distribution of funds to political subdivisions as prescribed; to change and provide duties; to harmonize provisions; to repeal the original sections; to outright repeal sections 39-2117 and 39-2119.01, Reissue Revised Statutes of Nebraska, and section 39-2116, Revised Statutes Cumulative Supplement, 2018; and to declare an emergency.

**LEGISLATIVE BILL 83.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to voting rights; to amend sections 29-112, 29-113, 32-313, and 32-1530, Reissue Revised Statutes of Nebraska, and sections 29-2264, 32-312, and 83-1,118, Revised Statutes Cumulative Supplement, 2018; to provide for the restoration of voting rights upon completion of a felony sentence; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 84.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-2716, Reissue Revised Statutes of Nebraska; to provide an income tax deduction for certain wages paid to individuals convicted of a felony; and to repeal the original section.

**LEGISLATIVE BILL 85.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to cities; to provide for a rental housing inspection program for a city of the metropolitan class or a city of the primary class as prescribed; and to provide a duty for the Revisor of Statutes.

**LEGISLATIVE BILL 86.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to revenue and taxation; to amend sections 76-901 and 76-903, Reissue Revised Statutes of Nebraska, and section 58-708, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to the distribution of funds from the Affordable Housing Trust Fund and the documentary stamp tax; and to repeal the original sections.

**LEGISLATIVE BILL 87.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to the Department of Economic Development; to amend section 81-12,149, Reissue Revised Statutes of Nebraska, and sections 58-708, 81-1201.21, and 81-12,156, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to the distribution of funds from the Affordable Housing Trust Fund, from the Site and Building Development Fund, from the Job Training Cash Fund, and under the Business Innovation Act; and to repeal the original sections.

**LEGISLATIVE BILL 88.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to taxation; to amend section 77-2715.07, Reissue Revised Statutes of Nebraska; to provide an income tax credit for certain purchases of a residence; and to repeal the original section.

**LEGISLATIVE BILL 89.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to the Uniform Controlled Substances Act; to amend sections 28-416 and 28-1354, Revised Statutes Cumulative Supplement, 2018; to change certain marijuana penalties; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 90.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 29-2204.02, Reissue Revised Statutes of Nebraska, and section 28-105, Revised Statutes Cumulative Supplement, 2018; to make post-release supervision optional for Class IV felonies as prescribed; to provide for applicability of changes; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 91.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to criminal procedure; to provide for deferred judgments by courts as prescribed; and to provide a duty for the Revisor of Statutes.

**LEGISLATIVE BILL 92.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to the Nebraska Juvenile Code; to amend section 43-283, Reissue Revised Statutes of Nebraska; to require application of the Nebraska Evidence Rules at parental termination hearings as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 93.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to civil procedure; to amend section 25-328, Reissue Revised Statutes of Nebraska; to provide for intervention by a biological parent in certain proceedings involving juveniles as prescribed; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 94.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to treatment and corrections; to amend section 47-918, Revised Statutes Cumulative Supplement, 2018; to require a report by the Inspector General of the Nebraska Correctional System; to designate the Nebraska State Patrol as the agency to investigate criminal activity within correctional facilities operated by the Department of Correctional Services as prescribed; to provide powers and duties for the patrol; to provide for confidentiality of certain records; to harmonize provisions; to provide an operative date; and to repeal the original section.

**LEGISLATIVE BILL 95.** Introduced by Wayne, 13; Stinner, 48.

A BILL FOR AN ACT relating to the state building code; to amend sections 71-6404, 71-6405, and 71-6406, Reissue Revised Statutes of Nebraska; to define a term; to change the applicability of provisions to public buildings; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 96.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to building codes; to amend sections 71-6404 and 71-6406, Reissue Revised Statutes of Nebraska; to change provisions relating to local building and construction codes; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 97.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to funding for highways; to amend sections 39-2203, 39-2205, 39-2209, 39-2211, 39-2212, 39-2213, 39-2216, 39-2222, 39-2223, 39-2704, and 66-4,100, Reissue Revised Statutes of Nebraska, and section 39-2224, Revised Statutes Cumulative Supplement, 2018; to authorize issuance of highway bonds; to create a fund; to change provisions of the Nebraska Highway Bond Act and the Build Nebraska Act; to pledge revenue for the bonds; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 98.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to the Election Act; to amend section 32-618, Reissue Revised Statutes of Nebraska; to change signature requirements for nomination of partisan candidates by petition; and to repeal the original section.



**MOTION - Escort Committees**

Senator Williams moved that a series of committees be appointed to escort the various state and constitutional officers for the purpose of administering their oaths of office.

The motion prevailed.

**BILLS ON FIRST READING**

The following bills were read for the first time by title:

**LEGISLATIVE BILL 99.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to the Prompt Payment Act; to amend sections 81-2402, 81-2403, 81-2404, and 81-2405, Reissue Revised Statutes of Nebraska; to define a term; to change requirements for bills submitted by small businesses; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 100.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to appropriations; to state intent relating to appropriations to the Nebraska State Historical Society as prescribed; and to declare an emergency.

**LEGISLATIVE BILL 101.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to political accountability and disclosure; to amend section 49-1499.03, Reissue Revised Statutes of Nebraska; to change actions required to be taken by an elected officeholder of certain cities or villages or a school district relating to a potential conflict of interest; and to repeal the original section.

**LEGISLATIVE BILL 102.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to the University of Nebraska-Lincoln; to amend sections 85-1,134 and 85-1,136, Reissue Revised Statutes of Nebraska; to change references from the Big Twelve Conference to the Big Ten Conference in provisions requiring payment of a stipend or restricting hours of participation for persons competing in intercollegiate athletics; and to repeal the original sections.

**LEGISLATIVE BILL 103.** Introduced by Linehan, 39.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-1601.02, Reissue Revised Statutes of Nebraska; to change provisions relating to property tax requests; and to repeal the original section.

**LEGISLATIVE BILL 104.** Introduced by Linehan, 39.

A BILL FOR AN ACT relating to the Nebraska Education Improvement Fund; to amend sections 9-812 and 85-1920, Revised Statutes Cumulative Supplement, 2018; to change the distribution of funds as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 105.** Introduced by Linehan, 39.

A BILL FOR AN ACT relating to the State of Nebraska; to designate a state vegetable.

**LEGISLATIVE BILL 106.** Introduced by Dorn, 30.

A BILL FOR AN ACT relating to the DNA Identification Information Act; to amend section 29-4108, Reissue Revised Statutes of Nebraska; to change provisions relating to DNA records; and to repeal the original section.

**LEGISLATIVE BILL 107.** Introduced by Dorn, 30.

A BILL FOR AN ACT relating to cities and villages; to amend sections 18-1901, 18-1902, 18-1903, 18-1904, 18-1906, 18-1908, 18-1911, and 18-1914, Reissue Revised Statutes of Nebraska; to change provisions relating to plumbing boards and their terms of office, organization, appointment, and meetings; to change provisions relating to plumbing licenses, renewal licenses, license fees, and variance fees; to change penalties; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 108.** Introduced by Bolz, 29.

A BILL FOR AN ACT relating to the Nebraska Treatment and Corrections Act; to amend section 83-176, Reissue Revised Statutes of Nebraska, and section 83-1,135, Revised Statutes Cumulative Supplement, 2018; to prescribe requirements for and limitations on placement of Department of Correctional Services inmates in county jails as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 109.** Introduced by Bolz, 29.

A BILL FOR AN ACT relating to state employees; to amend sections 81-1307 and 84-1601, Reissue Revised Statutes of Nebraska; to require the position classification plan and salary or pay plan to include certain positions as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 110.** Introduced by Wishart, 27; Chambers, 11; Hansen, M., 26; Howard, 9; Hunt, 8; Kolowski, 31; McCollister, 20; Morfeld, 46; Pansing Brooks, 28; Quick, 35; Vargas, 7; Walz, 15; Wayne, 13.

A BILL FOR AN ACT relating to cannabis; to amend sections 28-439, 77-2701.48, 77-2704.09, 77-27,132, 77-27,237, and 77-4303, Reissue Revised Statutes of Nebraska, and section 28-416, Revised Statutes Cumulative Supplement, 2018; to adopt the Medical Cannabis Act; to change provisions relating to controlled substances and taxation; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 111.** Introduced by Howard, 9; Hunt, 8.

A BILL FOR AN ACT relating to certificates of title; to amend sections 37-1278 and 60-151, Revised Statutes Cumulative Supplement, 2018; to change a certificate of title application signature requirement as prescribed; and to repeal the original sections.

**LEGISLATIVE BILL 112.** Introduced by Howard, 9; Blood, 3; Crawford, 45; Quick, 35.

A BILL FOR AN ACT relating to the Uniform Credentialing Act; to amend sections 38-151, 38-154, and 38-155, Reissue Revised Statutes of Nebraska, and sections 38-101, 38-105, 38-118.01, 38-129.01, and 38-131, Revised Statutes Cumulative Supplement, 2018; to define terms; to provide for the waiver of certain fees for low-income individuals, military families, and young workers; to harmonize provisions; to provide an operative date; and to repeal the original sections.

**LEGISLATIVE BILL 113.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to the Office of Inspector General of the Nebraska Correctional System Act; to amend section 47-913, Revised Statutes Cumulative Supplement, 2018; to require the Department of Correctional Services to provide access to certain records; to define a term; and to repeal the original section.

**LEGISLATIVE BILL 114.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to the Nebraska Treatment and Corrections Act; to amend section 83-1,107, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to reductions of good time; and to repeal the original section.

**LEGISLATIVE BILL 115.** Introduced by Blood, 3.

A BILL FOR AN ACT relating to schools; to amend section 79-216, Reissue Revised Statutes of Nebraska, and section 79-215, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to enrollment; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 116.** Introduced by Kolterman, 24.

A BILL FOR AN ACT relating to insurance; to authorize electronic delivery of insurance policies and billing information to insureds as prescribed.

**LEGISLATIVE BILL 117.** Introduced by Hilgers, 21.

A BILL FOR AN ACT relating to highways and bridges; to amend sections 39-1351, 39-1352, and 39-1354, Reissue Revised Statutes of Nebraska, and section 39-1353, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to construction contract bidding, qualification, evaluation, and proposals; to change certification of financial showing as prescribed; to change provisions relating to obtaining contract plans prepared by the Department of Transportation; and to repeal the original sections.

**LEGISLATIVE BILL 118.** Introduced by Arch, 14.

A BILL FOR AN ACT relating to county records; to provide for withholding the residential address of a physician or an osteopathic physician from the public; and to provide an operative date.

**LEGISLATIVE BILL 119.** Introduced by Arch, 14.

A BILL FOR AN ACT relating to the Health Care Quality Improvement Act; to amend sections 71-7904, 71-7906, 71-7907, 71-7910, 71-7911, and 71-7912, Reissue Revised Statutes of Nebraska; to define and redefine terms; to provide for immunity from liability and confidentiality of information relating to peer review; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 120.** Introduced by Crawford, 45.

A BILL FOR AN ACT relating to schools; to amend section 79-2,146, Reissue Revised Statutes of Nebraska, and section 79-2,144, Revised Statutes Cumulative Supplement, 2018; to require training on mental health as prescribed; to harmonize provisions; to repeal the original sections; and to declare an emergency.

**LEGISLATIVE BILL 121.** Introduced by Crawford, 45.

A BILL FOR AN ACT relating to cities and villages; to amend section 18-201, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to limits on indebtedness from direct borrowing; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 122.** Introduced by Crawford, 45.

A BILL FOR AN ACT relating to postsecondary education; to amend

section 85-502.01, Revised Statutes Cumulative Supplement, 2018; to change requirements for veterans and their spouses and dependents and other eligible persons to qualify as resident students as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 123.** Introduced by Crawford, 45.

A BILL FOR AN ACT relating to the Taxpayer Transparency Act; to amend section 84-602.04, Revised Statutes Cumulative Supplement, 2018; to add an exemption from data base requirements for certain contracts as prescribed; and to repeal the original section.

**LEGISLATIVE BILL 124.** Introduced by Crawford, 45.

A BILL FOR AN ACT relating to the Property Assessed Clean Energy Act; to amend section 13-3210, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to jointly created and administered clean energy assessment districts; and to repeal the original section.

**LEGISLATIVE BILL 125.** Introduced by Lathrop, 12.

A BILL FOR AN ACT relating to victims' rights; to amend section 29-119, Revised Statutes Cumulative Supplement, 2018; to redefine a term; and to repeal the original section.

**LEGISLATIVE BILL 126.** Introduced by Hughes, 44.

A BILL FOR AN ACT relating to the Game Law; to amend section 37-455, Reissue Revised Statutes of Nebraska; to provide for special landowner deer hunting permits as prescribed; to provide a duty for the Game and Parks Commission; and to repeal the original section.

**LEGISLATIVE BILL 127.** Introduced by Hughes, 44.

A BILL FOR AN ACT relating to hunting; to amend section 37-455, Reissue Revised Statutes of Nebraska; to redefine immediate family for purposes of limited permits; and to repeal the original section.

**LEGISLATIVE BILL 128.** Introduced by Hughes, 44.

A BILL FOR AN ACT relating to motor vehicles; to amend section 37-327.04, Reissue Revised Statutes of Nebraska, and sections 60-301, 60-393, 60-395, 60-396, 60-3,104, and 60-3,130.04, Revised Statutes Cumulative Supplement, 2018; to provide for Wildlife Conservation Plates; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 129.** Introduced by Wayne, 13.

A BILL FOR AN ACT relating to appropriations; to appropriate funds to

the Department of Transportation.

**LEGISLATIVE BILL 130.** Introduced by DeBoer, 10; Hansen, M., 26; Wayne, 13.

A BILL FOR AN ACT relating to building construction standards; to amend sections 71-6403, 71-6404, 71-6406, 76-3501, 76-3502, 76-3503, 76-3504, and 76-3505, Reissue Revised Statutes of Nebraska; to change provisions relating to the state building code; to provide radon resistant new construction standards; to provide, change, and eliminate definitions; to restate intent; to eliminate a task force; to harmonize provisions; and to repeal the original sections.

### RESOLUTION(S)

**LEGISLATIVE RESOLUTION 1CA.** Introduced by Wayne, 13.

THE MEMBERS OF THE ONE HUNDRED SIXTH LEGISLATURE OF NEBRASKA, FIRST SESSION, RESOLVE THAT:

Section 1. At the general election in November 2020, the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To amend Article I, section 2:

I-2 There shall be neither slavery nor involuntary servitude in this state, ~~otherwise than for punishment of crime, whereof the party shall have been duly convicted.~~

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to eliminate slavery or involuntary servitude as a punishment for crime.

For

Against.

**LEGISLATIVE RESOLUTION 2.** Introduced by Blood, 3.

WHEREAS, the Constitutional Convention of 1787 was initially convened to make revisions to the Articles of Confederation and this Convention decided instead to discard the Articles of Confederation entirely and create a new system of government; and

WHEREAS, the Constitution of the United States has served as the cornerstone of American liberty since its creation in 1787 and was the first written national constitution to set forth a system of separation of powers and to ensure that the rights of minority groups could not be easily trampled upon by the will of the majority; and

WHEREAS, despite turmoil and grave political and economic concerns, including, without limitation, the contested presidential elections of 1800, 1876, and 2000, the Civil War, and the Great Depression, a subsequent constitutional convention has not been held since 1787; and

WHEREAS, the Constitution has proven to be resilient and has been amended only twenty-seven times during the course of its two-hundred-thirty-year history; and

WHEREAS, Article V of the Constitution requires the Congress of the United States to convene a constitutional convention upon the application of two-thirds of the several states; and

WHEREAS, in 1893, the Legislature passed a joint resolution to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 1903, the Legislature passed House Roll No. 167 to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 1907, the Legislature passed Senate File No. 313 to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 1911, the Legislature passed a joint resolution to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 1949, the Legislature passed Legislative Resolution 32 to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 1965, the Legislature passed Legislative Resolution 42 to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 1978, the Legislature passed Legislative Resolution 152 to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 1979, the Legislature passed Legislative Resolution 106 to make an application to the Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, in 2010, the Legislature passed Legislative Resolution 538 to make an application to Congress to call a convention to propose specified amendments to the Constitution; and

WHEREAS, a Legislature may not bind a future Legislature for the very reason that in the course of human events new priorities emerge, what represented positive adaptation at a particular time ceases to do so, and the will of the people of the State of Nebraska changes; and

WHEREAS, nearly all the members of the Legislature who voted for the foregoing resolutions are deceased and over ninety-five percent of the members of the current Legislature have not had an opportunity to consider or take a position on any of the foregoing resolutions, indeed may not even be aware of their contents; and

WHEREAS, a litany of such resolutions have been passed by the legislatures of the several states and are currently pending, awaiting in some cases only the action of a few states;

WHEREAS, action by the current legislature of a small number of states could, in a very short period of time, irrevocably trigger one or more conventions to be convened, perhaps concurrently, without the concurrence of two-thirds of the current legislatures; and

WHEREAS, the powers and limitations on a convention of the states or multiple conventions being held simultaneously or jointly are unclear and uncertain; and

WHEREAS, a constitutional convention convened by Congress could make sweeping changes to the Constitution and threaten the liberty of future generations of Nebraskans; and

WHEREAS, the Legislature is aware that other state legislatures have made applications requesting that Congress convene a constitutional convention; and

WHEREAS, the issues raised and contents of the respective resolutions may no longer be germane to the present times; and

WHEREAS, the Legislature no longer supports its previous resolutions which requested that Congress convene a constitutional convention, most of which were adopted over three decades ago, and does not wish for these resolutions to be included with similar applications which were made by other state legislatures.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED SIXTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That each resolution passed by the Legislature described in this resolution and any additional resolutions previously passed by the Legislature petitioning Congress to call for a constitutional convention under Article V of the Constitution of the United States shall be rescinded upon passage of this resolution.

2. That the members of the Legislature urge each state legislature which has previously requested Congress to convene a constitutional convention to withdraw such applications.

3. That the Clerk of the Legislature prepare and transmit a copy of this resolution to the Vice President of the United States as the presiding officer of the United States Senate, the Speaker of the United States House of Representatives, and each member of Nebraska's congressional delegation.

Laid over.

#### **SPEAKER'S ANNOUNCEMENT**

Pursuant to Rule 4, Section 8, LR2 was referred to the Reference Committee.

#### **RESOLUTION(S)**

**LEGISLATIVE RESOLUTION 3CA.** Introduced by Erdman, 47.

THE MEMBERS OF THE ONE HUNDRED SIXTH LEGISLATURE OF NEBRASKA, FIRST SESSION, RESOLVE THAT:

Section 1. At the general election in November 2020, the following proposed amendment to the Constitution of Nebraska shall be submitted to the electors of the State of Nebraska for approval or rejection:

To add a new section 14 to Article VIII:



VIII-14 (1) Notwithstanding any other provision of this Constitution, the Legislature shall provide by law for a refundable credit against the income tax imposed by the State of Nebraska in an amount equal to thirty-five percent of the property taxes that were:

(a) Levied on real property located in this state; and

(b) Paid by the taxpayer during the taxable year.

(2) The Legislature shall make the credit available for taxable years beginning on or after January 1, 2021.

Sec. 2. The proposed amendment shall be submitted to the electors in the manner prescribed by the Constitution of Nebraska, Article XVI, section 1, with the following ballot language:

A constitutional amendment to require the Legislature to provide a refundable state income tax credit in an amount equal to thirty-five percent of the property taxes that were levied on real property located in this state and paid by the taxpayer during the taxable year.

For

Against.

### RECESS

At 11:18 a.m., on a motion by Senator Albrecht, the Legislature recessed until 1:30 p.m.

### AFTER RECESS

The Legislature reconvened at 1:30 p.m., Speaker Scheer presiding.

### ROLL CALL

The roll was called and all members were present except Senator Chambers who was excused until he arrives.

### BILLS ON FIRST READING

The following bills were read for the first time by title:

**LEGISLATIVE BILL 131.** Introduced by Pansing Brooks, 28; DeBoer, 10; Lathrop, 12; Wayne, 13.

A BILL FOR AN ACT relating to crimes and punishment; to amend section 29-2204, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to minimum sentences; and to repeal the original section.

**LEGISLATIVE BILL 132.** Introduced by Pansing Brooks, 28; DeBoer, 10; Howard, 9; Hunt, 8; Quick, 35; Vargas, 7; Wayne, 13.

A BILL FOR AN ACT relating to crimes and offenses; to amend section 28-105, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to certain penalties for persons under nineteen years of

age; to harmonize provisions; and to repeal the original section.

**LEGISLATIVE BILL 133.** Introduced by Pansing Brooks, 28; Brewer, 43; Wayne, 13.

A BILL FOR AN ACT relating to the Nebraska Treatment and Corrections Act; to amend sections 83-182.01 and 83-1,114, Revised Statutes Cumulative Supplement, 2018; to change provisions relating to structured programming and deferral of parole as prescribed; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 134.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to revenue and taxation; to amend section 77-3442, Reissue Revised Statutes of Nebraska, and section 2-3225, Revised Statutes Cumulative Supplement, 2018; to provide certain levy authority and duties for natural resources districts; to harmonize provisions; and to repeal the original sections.

**LEGISLATIVE BILL 135.** Introduced by Stinner, 48.

A BILL FOR AN ACT relating to the Emergency Medical Services Practice Act; to amend section 38-1220, Reissue Revised Statutes of Nebraska; to change provisions relating to an exemption from licensing requirements; and to repeal the original section.

#### **PRESENTATION OF COLORS**

Presentation of Colors by the Nebraska Army and Air National Guard.

#### **INAUGURAL CEREMONIES**

Chief Justice Michael G. Heavican, administered the Oath of Office to the newly elected state officials.

Governor Pete Ricketts delivered his inaugural address. The text will appear in the following day's Journal.

The Governor, Lt. Governor, their families, and other newly elected state officials were escorted from the Chamber.

#### **ADJOURNMENT**

At 2:49 p.m., on a motion by Senator Lowe, the Legislature adjourned until 10:00 a.m., Friday, January 11, 2019.

Patrick J. O'Donnell  
Clerk of the Legislature